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IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1329

EDWARD H. HYNES, *et al.*,

Appellants,

—v.—

THE MAYOR AND COUNCIL OF THE BOROUGH OF ORADELL, *et al.*,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF NEW JERSEY

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

Appellants appeal from the final judgment of the Supreme Court of the State of New Jersey, entered on January 24, 1975, reversing judgments of the Appellate Division of the Superior Court of New Jersey and the Superior Court of New Jersey, and submit this Statement to show that the Supreme Court of the United States has jurisdiction of the appeal, and that a substantial question is presented.

Opinions Below

The opinion of the Supreme Court of the State of New Jersey is reported at 66 N.J. 376 (1975) and is attached hereto as Appendix A1-18. A related case decided the same day by the New Jersey Supreme Court, *Borough of Collingswood* v. *Donald Ringgold,* is reported at 66 N.J. 350 (1975) and is attached hereto as Appendix A19-45. The opinion of the Appellate Division of the Superior Court of New Jersey is not yet officially reported, and is attached hereto as Appendix B. The decision and judgment of the Superior Court of New Jersey is not reported, and is attached hereto as Appendix C.

Jurisdiction

This action was commenced in the Superior Court of the State of New Jersey, Bergen County, against the Borough of Oradell, New Jersey, for a judgment declaring unconstitutional under the First, Fourteenth and Fifteenth Amendments to the Constitution of the United States, an ordinance enacted by the Borough, and enjoining enforcement of that ordinance. Upon motion for a preliminary injunction, a hearing was held and the Superior Court (trial court) ruled that the ordinance was void because violative of the First Amendment, as well as because it was incomplete under requirements of New Jersey law, and entered judgment in favor of the plaintiffs (App. C4). The Appellate Division of the Superior Court affirmed the judgment of the trial court. On appeal to the Supreme Court of New Jersey, the ordinance was held valid under the First Amendment and all other provisions of the United States Constitution. The

judgments below were reversed, with the instruction that judgment for the defendants be entered. Two members of the Court dissented.

The judgment of the Supreme Court of New Jersey was entered on January 24, 1975, and Notice of Appeal was filed in that Court on April 16, 1975 (Appendix D). The jurisdiction of the United States Supreme Court to review this decision on appeal is conferred by Title 28 United States Code, Section 1257(2). The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on appeal in this case: *King Mfg. Co.* v. *Augusta,* 277 U.S. 100 (1928); *Jamison* v. *Texas,* 318 U.S. 413 (1943); *Independent Warehouses, Inc.* v. *Scheele,* 331 U.S. 70 (1947); *Poulos* v. *New Hampshire,* 345 U.S. 395 (1953); *Coates* v. *Cincinnati,* 402 U.S. 611 (1971).

Statute Involved

Borough of Oradell Ordinance No. 598-A provides:

> An Ordinance to Amend and Supplement an Ordinance Entitled "An Ordinance to Regulate and Prohibit Canvassing and Soliciting in the Borough of Oradell and Establish Fees and Provide Penalties for the Violation Thereof."
>
> WHEREAS, The Borough of Oradell is primarily a one family residential town whose citizens are employed elsewhere, resulting in the wives of the wage earner being left alone during the day; and
>
> WHEREAS, because of the geographical location of most of the homes it is impossible to police all areas at the same time, resulting in a number of break and entries and larceny in the home; and

WHEREAS, it is in the public interest and the public safety that persons not be permitted to call from house to house on the pretext of soliciting votes for a designated candidate or signatures for a nominating petition, or to solicit for a recognized charitable cause or borough activity, without such persons being first identified by the Police Department; and

WHEREAS, the Mayor and Borough Council of The Borough of Oradell feel that it is in the public interest and for the protection of The Borough of Oradell that such persons be required to notify the Police Department for the purpose of identification.

NOW, THEREFORE, BE IT ORDAINED by the Borough Council of The Borough of Oradell, in the County of Bergen and State of New Jersey, that an ordinance entitled "An ordinance to regulate and prohibit canvassing and soliciting in The Borough of Oradell and establish fees and provide penalties for the violation thereof" be amended and supplemented as follows:

(1) That Section 1 be amended and supplemented by the addition of Section 1 (a) to be entitled "Exceptions to Permit" as hereinafter set forth:

SECTION 1 (a): EXCEPTIONS TO PERMIT

Any person desiring to canvass, solicit or call from house to house in the Borough for a recognized charitable cause, or any person desiring to canvass, solicit or call from house to house for a Federal, State, County or Municipal political campaign or cause, shall be required to notify the Police Department, in writing, for identification only. Said notification shall be good for

the duration of the campaign or cause. The provisions of this section shall also apply to representatives of Borough Civic Groups and Organizations and any veterans honorably discharged or released under honorable circumstances from active service in any branch of the Armed Forces of the United States. All other Sections of Ordinance No. 573, with the exception of the penalty clause designated as Section 7, shall not be applicable to such persons or groups as designated herein.

(2) All ordinances or parts of ordinances inconsistent with this ordinance are hereby repealed.

(3) This ordinance shall take effect after final passage and publication as required by law.

This is to Certify that the foregoing ordinance was finally passed and adopted at the regular meeting of the Council of The Borough of Oradell, N. J. on July 16, 1974, and that the same was approved by the Mayor on July 16th, 1974.

STANLEY J. KUFEL
Borough Clerk

The Sunday Post (R-5028)
Fee: $30.00
July 21, 1974

Questions Presented

Ordinance No. 598-A of The Borough of Oradell set forth above, requires that "any person desiring to canvass, solicit or call from house to house for a Federal, State, County or Municipal political campaign or cause, shall be required to notify the Police Department, in writing, for identification only." Criminal penalties are provided for violation of this ordinance. The Supreme Court of New Jersey has sustained the validity of the ordinance under the First Amendment and as against "any of the other rights of the plaintiffs herein." The plaintiffs include a member of The General Assembly of the State of New Jersey representing the Borough of Oradell, and four registered voters in and residents of Oradell.*

The questions presented are:

(1) Whether the Ordinance, on its face or as applied to the plaintiffs herein, is invalid under the First Amendment to the Constitution as made applicable to the States by the Fourteenth Amendment.

(2) Whether the Ordinance, on its face or as applied to the plaintiffs herein, is invalid under the due process or privileges and immunities clauses of the Fourteenth Amendment.

Statement of the Case

Appellant, Edward H. Hynes was first elected to the General Assembly of New Jersey in November 1971 as the representative of Assembly District 13-E. Due to reapportionment, the lines of Assemblyman Hynes' district

* Plaintiff Suzan DePrima no longer resides, nor is eligible to vote, in Oradell, New Jersey.

were redrawn in 1973 to include the Borough of Oradell, and the district was renumbered 38.

In March of 1973 Assemblyman Hynes, running for the Democratic nomination and working with limited financial resources (App. F2), went to the Borough of Oradell to campaign house-to-house for re-election. On that occasion, he was stopped by a member of the Oradell police force and ordered to leave the Borough. On April 3, 1973, the Borough of Oradell adopted Ordinance No. 598 (App. E5) as an amendment to its Canvassing and Soliciting Ordinance No. 573 (App. E1-4). By the terms of the amended ordinance, candidates for public office and participants in political and other causes were required to register with the Oradell Police Department before they could conduct house-to-house canvassing, soliciting or calling.

Appellants commenced this action in the Superior Court of Bergen County on October 15, 1973, to have Ordinance No. 598 declared unconstitutional because violative of rights guaranteed to them by the First, Fourteenth and Fifteenth Amendments to the Constitution, and for permanent injunctive relief from enforcement of the Ordinance (Verified Complaint, App. F). Appellant Hynes alleged that the purpose of his house-to-house canvassing was to inform Oradell voters of his candidacy and other issues of public importance, and that the Ordinance abridged his First Amendment right freely to communicate this information (App. F1-4). Appellants Stier, Barone, Kougasian and DePrima alleged that their First Amendment rights to receive such communications from candidates for political office, and to exchange views with such candidates and other residents of the Borough regarding matters of public importance, were unconstitutionally abridged by the Ordinance (App. F4-9). In their Answer, the defendants denied

that the Ordinance was unconstitutional and in an affidavit filed October 25, 1973, George Brugnoli, Chief of Police of the Borough of Oradell contended (App. G4-5) that the Ordinance was necessary to prevent crime, and that: "... knowing who is in the municipality and for what purpose is an important part of law enforcement."

Following a hearing on the motion for a preliminary injunction, the Superior Court on October 18, 1974, held *inter alia* that the Ordinance was invalid for lack of a penalty clause, unconstitutionally vague and overbroad, and violative of the First Amendment (App. C).[1] Its judgment was affirmed by the Superior Court, Appellate Division on April 15, 1973, on the ground that Ordinance No. 598 was invalid for lack of a penalty provision. The Appellate Division found it unnecessary to pass upon "the important issues" of constitutionality.

The Borough of Oradell appealed to the Supreme Court of New Jersey and, while this appeal was pending, the Borough on July 16, 1974 again amended Ordinance No. 573 by enacting Ordinance No. 598-A to replace No. 598.[2]

The New Jersey Supreme Court held that Ordinance No. 598-A, as the version of the ordinance in question extant at the time of appellate review, was the version of the ordinance before it for purposes of determining the case (App. A-4). Thus reaching the federal constitutional ques-

[1] The transcript of the trial judge's oral decision appears to be technically flawed.

[2] Ordinance No. 598-A provides a penalty for its violation. The reference in Ordinance No. 598-A to "the penalty clause designated as Section 7" is in error, as the penalty clause of Ordinance No. 573 is in fact Section 6 (App. E-4). However, the Supreme Court of New Jersey ruled that the defect in Ordinance No. 598 "was remedied by the adoption of another amendatory ordinance, 598-A, providing for a penalty on violation. . . ." (App. A-4.)

tions, the Court, with two dissents, reversed the decisions below and held that Ordinance No. 598-A "was not a constitutionally cognizable interference with a First Amendment right nor with any of the other rights of plaintiffs herein." Such governmental impingements upon speech and assembly as were effected by the ordinance were "reasonable," and the Court viewed reasonableness as the proper test of the Ordinance's constitutionality because the appellants sought to exercise their First Amendment rights "house-to-house" rather than "in public areas" (App. A5).

This Court Has Jurisdiction of This Appeal

The Supreme Court of New Jersey is the highest court of the State and its judgment, directing the lower court to enter judgment in favor of the defendants (App. A7), is final. *Board of Commissioners* v. *Lucas*, 93 U.S. 108. Ordinance No. 598-A of the Borough of Oradell is "a statute of any state" within the meaning of 28 U.S.C. 1257 (2). *Williams* v. *Bruffy*, 96 U.S. 176, 183; *King Mfg. Co.* v. *City Council of Augusta*, 277 U.S. 100; *Independent Warehouses* v. *Scheele*, 331 U.S. 70, 79; *Poulos* v. *New Hampshire*, 345 U.S. 395, 402; *Jamison* v. *Texas*, 318 U.S. 413; *Coates* v. *Cincinnati*, 402 U.S. 611. The complaint explicitly draws in question the validity of the Ordinance under the First, Fourteenth and Fifteenth Amendments to the United States Constitution (App. F3, 5, 6, 8 and 9). The Supreme Court of New Jersey explicitly decided in favor of the validity of the Ordinance under the First Amendment and as against "any of the other rights" of the plaintiffs (App. A7).

The Federal Questions Are Substantial

Plaintiffs' federal constitutional challenge to the Oradell Ordinance prevailed in the trial court, and the intermediate appellate court, while disposing of the case on other grounds, described the constitutional issues as "important" (App. B3). Two members of the New Jersey Supreme Court concluded that the Ordinance was constitutionally invalid (App. A7-18). As the numerous cases cited in the New Jersey court's opinions in this case and the related *Collingswood* case decided the same day (App. A19-45) demonstrate, the constitutional problems raised by ordinances of this general type are neither occasional nor of minor importance.

Appellants contend that the Ordinance serves no State interest sufficient to justify the chilling effect which its notification requirement will have on freedom of speech and assembly within and beyond the borders of the Borough of Oradell. We further contend that the Ordinance is void under the First Amendment because of overbreadth, and under the First Amendment and the due process clause for vagueness. Finally, we contend that the provisions of the Ordinance, insofar as they affect the conduct of campaigns for elective public office, also violate the privileges and immunities clause of the Fourteenth Amendment.

1. *Abridgement of Freedom of Speech and Assembly.* Oradell's Ordinance No. 598-A requires written notice for identification—tantamount to pre-registration—for the very sorts of speech and assembly which are the core of the freedoms protected by the First Amendment. A political candidate's freedom to communicate, and to have his supporters communicate, his views on public issues to the voters is crucial to the continued functioning of the Constitutional plan of government. *New York Times* v. *Sullivan,* 376 U.S. 254, 281; *Bond* v. *Floyd,* 385 U.S. 116, 135-37. The right to communicate necessarily includes the right to do so face-to-face. *Kleindienst* v. *Mandel,* 418 U.S. 753, 762-65; *Pell* v. *Procunier,* —— U.S. ——, 41 L. Ed. 2d 495. The voters and, indeed, all citizens, have the correlative First Amendment right to receive the candidate's views and discuss them with him and among themselves. *Kleindienst* v. *Mandel, supra; Stanley* v. *Georgia,* 394 U.S. 557, 564; *Thomas* v. *Collins,* 323 U.S. 516 at 533-34.

The New Jersey court made much of their belief that "no lesser form of intrusion on their right of free speech, other than absolutely no intrusion, than the identification device here" could be conceived (App. A7). But as Justice Pashman pointed out in his dissenting opinion (App. A11-14), the "notification device" is far less innocuous than at first appears.

Despite the limiting phrase "for identification only" in the ordinance, its requirement will indubitably and substantially "chill" freedom of communication, both among the residents of Oradell and between them and persons coming into the community. The existence of the ordinance, and doubt with respect to its reach, are bound to discourage such exchange of views, especially with the possibilities of oppressive or discriminatory enforcement to which Justice Pashman alludes (App. A11-12).

In Oradell, as elsewhere, some candidates and causes are popular and others are not. This Court paid heed to the social values of anonymity in *Talley* v. *California,* 362 U.S.

60, pointing (362 U.S. at 65) to earlier cases in which public identification of "members of groups engaged in the dissemination of ideas" was also held violative of the First Amendment. *Bates* v. *Little Rock*, 361 U.S. 516; *National Assn. for Advancement of Colored People* v. *Alabama*, 357 U.S. 449; *cf. Lamont* v. *Postmaster General*, 381 U.S. 301, 307; see also *Strasser* v. *Doorley*, 432 F.2d 567, 569 (C.A. 1st 1970).

In *Thomas* v. *Collins*, 323 U.S. 516, the registration requirement covered more information than the New Jersey ordinance narrowly construed, appears to call for. But the Texas statute considered in that case was defended on the same ground as in the present case: that it was "merely a previous identification requirement" giving the state officials "only 'ministerial not discretionary' authority" (323 U.S. at 538). But this Court, while recognizing that such requirements might be justifiable where solicitation of funds or subscriptions was concerned, held to the contrary where speech alone was involved, saying (323 U.S. at 540):

> If the exercise of the rights of free speech and free assembly cannot be made a crime, we do not think this can be accomplished by the device of requiring previous registration as a condition for exercising them and making such a condition the foundation for restraining in advance their exercise and for imposing a penalty for violating such a restraining order. So long as no more is involved than exercise of the rights of free speech and free assembly, it is immune to such a restriction. If one who solicits support for the cause of labor may be required to register as a condition to the exercise of his right to make a public speech, so may

> he who seeks to rally support for any social, business, religious or political cause. We think a requirement that one must register before he undertakes to make a public speech to enlist support for a lawful movement is quite incompatible with the requirements of the First Amendment.

The New Jersey court sought (App. A5) to distinguish *Thomas* v. *Collins* on the ground that house-to-house interchange as opposed to speech "in public areas" is "conduct which amounts to more than the right of free discussion comprehends."[3] The State interest invoked to justify the identification requirement is "the apprehension of unwarranted intrusion" (App. A6-7), which is certainly a substantial social value. But mere recital of a substantial, or even compelling, State interest is not enough to justify First Amendment restrictions. As Mr. Justice Harlan, concurring in *Talley* v. *California*, *supra*, at 66-67, observed:

> Here the State says that this ordinance is aimed at the prevention of "fraud, deceit, false advertising, negligent use of words, obscenity, and libel," in that it will aid in the detection of those responsible for spreading material of that character. But the ordinance is not so limited, and I think it will not do for the State simply to say that the circulation of all anonymous handbills must be suppressed in order to identify the distributors of those that may be of an obnoxious character. In the absence of a more substantial show-

[3] The last quoted phrase from the opinion in *Thomas* v. *Collins* referred (323 U.S. at 540) not to house-to-house discussion but to "the collection of funds or securing subscriptions"—activities in no way involved in the present case.

ing as to Los Angeles' actual experience with the distribution of obnoxious handbills, such a generality is for me too remote to furnish a constitionally acceptable justification to the deterrent effect on free speech which this all-embracing ordinance is likely to have.

Bare assertions of governmental interest do not justify intrusions on paramount constitutional rights. As this Court stated in *Bates* v. *Little Rock, supra* at 525:

> . . . governmental action does not automatically become reasonably related to the achievement of a legitimate and substantial governmental purpose by mere assertion in the preamble of an ordinance. When it is shown that state action threatens significantly to impinge upon constitutionally protected freedom it becomes the duty of this Court to determine whether the action bears a reasonable relationship to the achievement of the governmental purpose asserted as its justification.

Such a "reasonable relationship" is lacking here. The reasoning apparently is that by requiring candidates for public office and their supporters, and supporters of other public causes, to register with its Police Department, the Borough of Oradell will somehow be better able to prevent crime by determining who is on its streets and at its front doors and for what purposes. But it is difficult if not impossible to see how a written identification, probably sent to the police by mail (App. A5) can serve any useful police purpose.

The identification will not tell the police when or where the registering person will be calling house to house. There appears to be nothing to prevent those on criminal

mischief bent from sending in their names as prospective canvassers or callers for a worthy cause, in which case the house-holder's telephonic check with the police is more likely to lull than alert him. As Justice Hall, dissenting in the present case, concluded (App. A7-8), the requirement has no reasonable relation to the object sought to be attained, and consequently "exceeds the public need and substantially affects desirable conduct not sufficiently related to the claimed evil."

In assessing the extent of the Ordinance's impingement on First Amendment guarantees, it should be borne in mind that the Ordinance is not limited to non-residents of Oradell who come into the Borough for one of the specified purposes. Police Chief Brugnoli's affidavit (App. G4-5) in support of the defendants' answer is addressed to political candidates who enter the Borough, but, of course, the scope of the Ordinance is far broader. The breadth of the Ordinance is an intrinsic and fatal defect, as we undertake to show in the next following part of this Statement.

2. *Overbreadth.* Oradell Ordinance No. 598-A provides that ". . . any person desiring to canvass, solicit or call from house to house" for the specified purposes shall give the required notification. The New Jersey court treated it as directed against "strangers filtering through the community" (App. A6 and 26), but of course the Ordinance is not so limited, as it applies to "any person," without qualification or limitation. This comprehends not only "strangers" and other non-residents, but residents of the Borough as well.

Even if the Ordinance might lawfully be applied to a non-resident political candidate such as appellant Hynes (which, of course, we contest), the Ordinance must be invalidated in its application to the other appellants, and, indeed, held invalid on its face as well. The sweep of the Ordinance is unconstitutional because it is so broad as to cover speech plainly covered by the First Amendment.

It is now well settled that appellants have "standing to raise an over-breadth challenge." *Grayned* v. *City of Rockford,* 408 U.S. 104, 114-15. Furthermore, the complaint in behalf of appellants Stier, Barone, Kougasian and DePrima explicitly embrace rights additional to those asserted by appellant Hynes.

The New Jersey court, although it construed the Ordinance in several particulars, did not undertake to give further definition to the phrase "canvass, solicit or call from house to house." Giving the Ordinance the benefit of a narrower interpretation than the words denote, the phrase "call from house to house" might be treated as inapplicable unless there is house to house calling on some kind of systematic basis.

Even so limited, however, it is clear that the Ordinance would apply to any Oradell resident, who, becoming interested in some "political campaign or cause" decides to call at all the houses in his block to inform or persuade his or her neighbors.[4] Such a deep intrusion on community discussion could hardly be justified short of martial law conditions.

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[4] Criticism of precisely this feature of the Ordinance is voiced in paragraph 3 of appellant Hugh Stier's complaint (App. F5).

If defendants suggest that the Ordinance should be construed as not covering such activity, it may be replied that such a departure from the wording would be to give the Ordinance, in Chief Justice Taft's phrase, "a nose of wax to be changed from that which the plain language imports." *Yu Cong Eng* v. *Trinidad,* 271 U.S. 500, 518. Furthermore, there would remain the question where to draw the line regarding the Ordinance's application to residents. Pursuit of this inquiry would reveal, in this additional respect, the fatal vagueness of the Ordinance.

3. *Vagueness.* The New Jersey court rightly noted (App. A4-5) that Ordinance No. 598-A requires no fee, provides for no card or license, and reposes no official discretion to deny permission. The court further noted that its requirements "may be satisfied in writing, suggesting that resort may be had to the mails," and that only one notification is required "for each campaign." The court declared itself impressed with the clarity of the Ordinance with respect to the activities—"door to door activities of charitable solicitors, political campaigners and advocates in behalf of political causes"—covered by the law.

On this basis, the New Jersey court described "the only requirement of the Ordinance" as "one of simple identification" (App. A5). But that phrase is far from self-explanatory and the court did not probe its meaning. We suggest that the language of the Ordinance—"notify the Police Department, in writing, for identification only"—is fatally vague. The constitutional infirmity arises both from the sensitivity of the First Amendment freedoms to imprecise restrictions, and also from the requirements of the due process clause with respect to fair warning of the metes and bounds of the criminal law. *Grayned* v. *City of*

Rockford, supra at 108-09; *Coates* v. *Cincinnati,* 402 U.S. 611.

Since the Ordinance itself is silent with respect to the requisites of "notify" and "identification" (other than that the notification be "in writing"), it must be presumed that the Police Department is given discretion to determine what sort of "notification" is sufficient for "identification." There are no standards to guide or govern this discretion except the direction that a single notification shall be sufficient "for the duration of the campaign or cause." That is plainly insufficient to satisfy constitutional standards in a First Amendment context. *Lovell* v. *City of Griffin,* 303 U.S. 444; *Saia* v. *New York,* 334 U.S. 558; *Kunz* v. *New York,* 340 U.S. 290. The Ordinance gives the Police Chief an impermissible range of discretion "with the attendant dangers of arbitrary and discriminatory application," and by its imprecision "operates to inhibit the exercise" of First Amendment freedoms. *Grayned* v. *City of Rockford, supra,* at 109; see also *Coates* v. *Cincinnati, supra.*

The dangerous breadth of the discretion conferred is patent. Is the notifier's name alone sufficient? If so, what earthly use will his letter be to the police?[5] Must his organizational affiliations be specified? Must he declare what "campaign or cause" he is supporting or opposing? All this and more is left open, and it would appear plain that such vagueness is fatal to the criminal penalty provisions (imprisonment for up to 90 days and fine up to five hundred dollars) of the Ordinance (App. E4). *Lanzetta* v. *New*

[5] Chief Brugnoli's affidavit (App. G4-5) states that neither photograph nor fingerprints are required, but of course this declaration is not binding for the future on him or his successors. Brugnoli's further statement that the notifier need only "let us know who he is" adds less than nothing by way of clarification.

Jersey, 306 U.S. 451; *United States* v. *Cohen Grocery Co.,* 255 U.S. 81.

4. *Violation of the Privileges and Immunities Clause of the Fourteenth Amendment.* It is, of course, settled that the privileges and immunities clause of the Fourteenth Amendment protects only those rights "which owe their existence to the Federal Government, its National character, its Constitution, or its laws." *Slaughter-House Cases,* 16 Wall. 36, 79 (1873). By now those rights may probably be regarded as limited to "interests growing out of the relation between the citizens and the national government, created by the Constitution and federal laws." *Colgate* v. *Harvey,* 296 U.S. 404, 444 (Stone, J. dissenting).

The rights asserted by these appellants are of that description. The Ordinance applies to "Federal" as well as state and local campaigns and causes. Certainly the right to meet and discuss national candidates and issues stems from the Constitution and laws of the United States, and it may well also be that these rights in state and local contexts are so fundamental to a republican form of government that they should be accorded the same dignity.

Over a century ago this Court specified as among the guaranteed privileges and immunities the right to share in federal offices and participate in administering federal functions. *Slaughter-House Cases, supra,* at 79-81, quoting the opinion in *Crandall* v. *Nevada,* 6 Wall. 35, 45 (1868).[6] It

[6] See also *Hague* v. *C.I.O.,* 307 U.S. 496, in which Chief Justice Hughes and Justices Roberts and Black expressed the view that the guaranteed privileges and immunities included the right to assemble and discuss the National Labor Relations Act. The Chief Justice, however, agreed with Justices Stone and Reed that the question had not been properly raised. Justices McReynolds and Butler did not reach the question, and Justices Frankfurter and Douglas took no part in the decision.

is true, of course, that the Oradell Ordinance is not an absolute barrier to the exercise of voting and associated rights, but no more was the travel tax outlawed in the *Crandall* case. The scope of the rights to vote and stand for office necessarily comprehends the activities discouraged and the discussions chilled by the Ordinance challenged on this appeal.

We believe that the questions presented by this appeal are substantial and that they are of public importance.

Respectfully submitted,

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APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1329

EDWARD H. HYNES, *et al.*,

Appellants,

—v.—

THE MAYOR AND COUNCIL OF THE BOROUGH OF ORADELL, *et al.*,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF NEW JERSEY

FILED APRIL 22, 1975

PROBABLE JURISDICTION NOTED JUNE 9, 1975

Relevant Docket Entries in the Supreme Court of New Jersey

Notice of Appeal (from the decision of the Superior Court of New Jersey, Appellate Division, dated May 15, 1974) filed May 20, 1974.

Appellate Division Briefs and Appendix, filed (by Appellants in the New Jersey Supreme Court) May 28, 1974.

Appellate Brief and Supplemental Appendix, filed (by Appellants) June 11, 1974.

Appellate Division Briefs, filed (by Respondents in the New Jersey Supreme Court) August 23, 1974.

Transcripts (of the proceedings in the Superior Court, Bergen County) filed September 11, 1974.

Letter of Ned J. Parsekian (attorney for Respondents) filed October 17, 1974.

Letter of Ned J. Parsekian (with newspaper clippings) filed October 18, 1974.

Letter of Major & Major (attorneys for Appellants) filed October 21, 1974.

Letter of Ned J. Parsekian (with attached Decision) filed January 16, 1975.

Decision of the Supreme Court of New Jersey, filed January 24, 1975.

Notice of Appeal to the Supreme Court of the United States, filed April 16, 1975.

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APPENDIX A

Opinion in the Supreme Court of New Jersey

EDWARD H. HYNES, HUGH STIER, ANTHONY BARONE, MARITZA KOUGASIAN AND SUSAN DE PRIMA, PLAINTIFFS-RESPONDENTS, v. THE MAYOR AND COUNCIL OF THE BOROUGH OF ORADELL, AND THE BOROUGH OF ORADELL, A MUNICIPAL CORPORATION OF THE STATE OF NEW JERSEY, DEFENDANTS-APPELLANTS.

Argued October 21, 1974—Decided January 24, 1975.

SYNOPSIS

Action was brought for declaration of unconstitutionality of ordinance requiring candidates for political office, among others, to give local police department written notification before calling from house to house during election campaign and for an injunction restraining enforcement of the ordinance. The Superior Court, Chancery Division, held the ordinance unconstitutional and defective because of absence of penalty and the Superior Court, Appellate Division, af-

firmed on the latter ground and appeal was taken. The Supreme Court, Clifford, J., held that the ordinance was not an unreasonable identification device and did not constitutionally interfere with First Amendment rights.

Judgment of Appellate Division reversed and matter remanded to Chancery Division for entry of judgment in favor of defendants.

Hall, J., dissented and filed opinion.

Pashman, J., dissented and filed opinion.

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1. Appeal and error ⇐1107
Generally, law in question may be scrutinized as it exists at time of appellate review.

2. Constitutional law ⇐90.1(1), 91
Municipal corporations ⇐625
Ordinance requiring any person desiring to call from house to house for political campaign to notify police department in writing, for identification only, with notification to be good for duration of campaign, was reasonable in view of number of break-ins and illegal entries in the municipality, the simple identification device was acceptable means of protecting residents against apprehension of unwarranted intrusion and the device was not constitutionally cognizable interference with First Amendment right, as constituting prior restraint on freedoms of speech and assembly, nor with any other right of persons calling from house to house during election campaign. *U. S. C. A. Const. Amends.* 1, 14, 15; *R.* 2:2–1(a)(1).

Mr. James A. Major argued the cause for defendants-appellants (*Messrs. Major and Major*, attorneys).

Mr. Melvin Soloman argued the cause for plaintiffs-respondents Stier, Barone, Kougasian and DePrima (*Mr. Ned J. Parsekian*, attorney).

Mr. Lary I. Zucker argued the cause for respondent Hynes (*Mr. Jay W. Greenstone*, attorney).

The opinion of the Court was delivered by

CLIFFORD, J. Plaintiff Hynes has been a member of the General Assembly of the State of New Jersey since 1972. His election district includes the Borough of Oradell. The remaining plaintiffs are registered voters in Oradell. In 1973 the Borough adopted an amendment to its general canvassing and soliciting ordinance. By the terms of that amendment, entitled Ordinance 598, candidates for public office, among others, are required to give the local police department written notification before calling from house to house during an election campaign.

By this action plaintiffs seek a declaration of the unconstitutionality of the enactment and an injunction against its enforcement. Hynes argues that it inhibits his rights of free speech and of communication with his constituents in contravention of the First and Fourteenth Amendments to the United States Constitution. The remaining plaintiffs urge First, Fourteenth and Fifteenth Amendment grounds of invalidity, founded on an asserted frustration of their interests in casting informed and educated votes and in communicating with public officials. They contend candidates will, because of the "chilling effect" of the ordinance, avoid confronting its requirements and hence elect not to campaign in Oradell.

The trial court found this enactment "unconstitutional, void and unenforceable" as an infringement on plaintiffs' First Amendment rights. In addition, it deemed the ordinance defective because no penalty provision was included. This latter finding is the single ground upon which the Appellate Division, in an unreported opinion, rested its affirmance. A substantial constitutional issue being projected, the Borough appeals to this Court as of right. *R.* 2:2–1(a)(1).

[1] While the appeal was pending here, the absence of a penalty clause, correctly perceived as a fatal deficiency by the courts below, was remedied by adoption of another amendatory ordinance, 598–A, providing for a penalty on violation and including also recitals as to the purpose and intent of the enactment. At oral argument all counsel agreed the record should be molded to bring before us the latest ordinance for a determination of its validity. This is in keeping with the general rule permitting scrutiny of the law in question as it exists at the time of appellate review, *S. & L. Associates, Inc. v. Washington Twp.*, 35 *N. J.* 224, 227 (1961). Consequently, we direct our attention to Ordinance 598–A, enacted July 16, 1974.

The provisions of which plaintiffs complain read in substantial part as follows:

> **Any person desiring to canvass, solicit or call from house to house in the Borough for a recognized charitable cause, or any person desiring to canvass, solicit or call from house to house for a Federal, State, County or Municipal political campaign or cause, shall be required to notify the Police Department, in writing, for identification only. Said notification shall be good for the duration of the campaign or cause.**

[2] The thrust of plaintiffs' attack is that the ordinance is facially invalid as constituting a prior restraint on the freedoms of speech and assembly; and that, as expressed in their brief, "[w]here fundamental freedoms are concerned, any governmental impediment, no matter how slight, cannot be constitutionally countenanced. The interests of the state must of necessity give way to protection of First Amendment values." These expansive propositions must be rejected on the facts of this case, substantially for the reasons set forth in our opinion in *Collingswood v. Ringgold*, 66 *N. J.* 350 (1974), decided this day.

Initially we observe that while the ordinance before us in *Collingswood* was "not a model of clarity," 66 *N. J.* 350 at 364, the Oradell ordinance makes unmistakable the activity intended to be regulated and the persons brought within its

ambit. It addresses door-to-door ventures of charitable solicitors, political campaigners and advocates in behalf of political causes. In this respect it could hardly be more clear.

Secondly, the only requirement of the enactment is one of simple identification. It may be satisfied in writing, suggesting that resort may be had to the mails. It need be fulfilled only once for each campaign. There is no fee. The applicant does not have to obtain or carry a card or license. And perhaps most importantly, no discretion reposes in any municipal official to deny the privilege of calling door to door. The ordinance is plainly an identification device in its most basic form.

In *Collingswood* we have today approved the use of such neutral identification requirements as being a "legitimate tool in the hands of municipalities," 66 *N. J.* at 369. In that case we were faced with conduct which admittedly had a commercial element, defendants there being market research surveyors. In the instant case plaintiff Hynes' activity is "purer" in the sense that it is not diluted in any degree by commercial overtones; but it is nevertheless "conduct which amounts to more than the right of free discussion comprehends," *Thomas v. Collins*, 323 *U. S.* 516, 540, 65 S. Ct. 315, 327, 89 *L. Ed.* 430, 446 (1945), for the reason that it takes place not in public areas, traditionally the scene of uninhibited discussion, but rather is house-to-house in nature. That being so, different societal concerns are implicated, justifying an identification regulation. Since we deem such registration requirements to be neutral regulations akin to those of time, place and manner, see *Collingswood, supra*, 66 *N. J.* 350 at 365–366, the sole consideration is that they be "reasonable." See *Thomas v. Collins, supra*, 323 U. S. at 540, 65 S. Ct. at 327, 89 *L. Ed.* at 446; *Poulos v. New Hampshire*, 345 *U. S.* 395, 405, 73 S. Ct. 760, 766, 97 *L. Ed.* 1105, 1114 (1953).

Collingswood's identification requirements were found to be a reasonable means of protecting the municipality's resi-

dents "against a sense of unease and dangers reasonably to be apprehended on account of strangers filtering through the community," 66 *N. J.* 350 at 357. Precisely the same concerns of the municipality are presented in this case, as demonstrated in the ordinance's prefatory recitals:

> WHEREAS, the Borough of Oradell is primarily a one family residential town whose citizens are employed elsewhere, resulting in the wives of the wage earner being left alone during the day; and
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> WHEREAS, because of the geographical location of most of the homes it is impossible to police all areas at the same time, resulting in a number of break and entries and larceny in the home; and
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> WHEREAS, it is in the public interest and the public safety that persons not be permitted to call from house to house on the pretext of soliciting votes for a designated candidate or signatures for a nominating petition, or to solicit for a recognized charitable cause or borough activity, without such persons being first identified by the Police Department; and
>
> WHEREAS, the Mayor and Borough Council of The Borough of Oradell feel that it is in the public interest and for the protection of The Borough of Oradell that such persons be required to notify the Police Department for the purpose of identification. • • •

That a situation exists giving rise to a legitimate concern on the part of the municipal authorities is evidenced by the affidavit of the Chief of Police and a map of the Borough showing the locations of "break and entries" in 1972. The Chief's affidavit recites a total of 199 "breakings and enterings" within the Borough from 1969 to May, 1973, and 145 larcenies during 1972 — perhaps not dramatic numbers by comparison with metropolitan statistics of unhappy magnitude but nevertheless sufficient, in the Chief's words, to create "a problem in the area of law enforcement" for this small community of 8,903 (according to the 1970 census). We cannot label as unreasonable the effort to address this problem, in part, by requiring candidates for public office and others denominated in the ordinance to identify themselves before going through Oradell house to house. A simple identification device is an acceptable means of protecting the residents of a community against the apprehension of unwarranted intrusion. See authorities collected in *Collingswood v. Ringgold, supra*, 66 *N. J.* at 367–369.

At oral argument the attorney for plaintiff Hynes candidly admitted, as indeed he was obliged to by the circumstances, that he could conceive of no lesser form of intrusion on the right of free speech, other than absolutely no intrusion, than the identification device here. Neither can this Court. Such a device is not a constitutionally cognizable interference with a First Amendment right nor with any of the other rights of plaintiffs herein.

The judgment of the Appellate Division is reversed and the matter remanded to the Chancery Division for entry there of judgment in favor of defendants. No costs.

HALL, J. (dissenting). It is elementary that all police power legislation — this ordinance falls in that category — must be reasonable. The regulation must not be "arbitrary or capricious, the means selected must have a real and substantial relation to the object sought to be attained, and *the regulation or proscription must be reasonably calculated to meet the evil and not exceed the public need or substantially affect uses which do not partake of the offensive character of those which cause the problem sought to be ameliorated." Kirsch Holding Co. v. Borough of Manasquan*, 59 *N. J.* 241, 251 (1971). (emphasis supplied).

In my view, the ordinance before us clearly runs afoul of the emphasized portion of this quotation and I would nullify it on that ground alone without having to delve into difficult First Amendment problems. It seems to me so plain silly to require written registration with the police department of a small town before one can engage in the publicly desirable activity of soliciting support from the local citizenry for a political candidate or cause (as distinct from commercial house-to-house selling by strangers), on the pretext that such a requirement would help keep burglars and sneak thieves out of town, that it must be said, as matter of law, that the requirement exceeds the

public need and substantially affects desirable conduct not sufficiently related to the claimed evil.

I would affirm the invalidation of the ordinance.

PASHMAN, J. (dissenting). In 1973 plaintiff Edward Hynes was a member of the New Jersey Assembly and a candidate for re-election, although, due to intervening reapportionment, his district included the Borough of Oradell, which he had not previously represented. He conducted his campaign principally by personal house-to-house canvassing of voters. In this suit, he and a number of voters residing in Oradell claim that Oradell Ordinance No. 598–A, which requires registration with the municipal police department of political canvassers, unconstitutionally infringes on their right to freedom of speech and assembly protected by the first amendment to the federal constitution and *N. J. Const.* (1947), Art. I, ¶ 6.[1]

The majority treats the issues in this case as being essentially identical to those decided today in *Collingswood v. Ringgold, et al.*, 66 *N. J.* 350 (1975). This initial premise is mistaken and, unfortunately, has led the majority to a correspondingly mistaken conclusion. As I noted in my concurring opinion to that decision, 66 *N. J.* 350, at 374, *Collingswood v. Ringgold* concerned commercial speech, which is substantially outside the zone of protection created by the first amendment. *Pittsburgh Press Co. v. Pittsburgh Comm. on Human Relations*, 413 *U. S.* 376, 93 S. Ct. 2553, 37 L. Ed. 2d 669 (1973); *Valentine v. Chrestensen*, 316 *U. S.* 52, 62 S. Ct. 920, 86 L. Ed. 1262 (1942); *Passaic Daily News v. Blair*, 63 *N. J.* 474 (1973). In the present case

[1]Plaintiffs do not suggest that *N. J. Const.* (1947), Art. I, ¶ 6 affords them more protection that the first amendment, and therefore I see no need to pursue that issue here. We are, of course, not bound to limit the protection provided by our State constitution to that provided by the federal constitution. *Robinson v. Cahill*, 62 *N. J.* 473 (1973) *cert.* denied 414 *U. S.* 976, 94 S. Ct. 292, 38 L. Ed. 2d 219 (1973).

we are concerned with efforts by a candidate for political office to communicate with voters, speech which is unquestionably within the protection of the first amendment.

Indeed, if one were to range various types of speech according to the degree of protection to which they are entitled, the type of speech involved in this case would certainly come first, for free communication between voters and holders of and candidates for elective office is one of the prior conditions to the possibility of free, representative government. The right of candidates to make their positions known to the voters, and of voters to express their views on public issues to candidates for and holders of elective office is the very substance of the democratic process. As Prof. Alexander Meiklejohn, perhaps the leading expositor of the primacy within the protection of the first amendment of speech associated with political processes, has observed:

> The principle of freedom of speech springs from the necessities of the program of self-government. It is not a Law of Nature or of Reason in the abstract. It is a deduction from the basic American agreement that public issues shall be decided by universal suffrage. [*Meiklejohn, Free Speech and Its Relationship to Self-Government* (1948) 26–27].

The United States Supreme Court has expressed the same thought more briefly: "• • • [T]he exercise of the rights [of freedom of speech and press] lies at the foundation of free government." *Schneider v. Irvington*, 308 *U. S.* 147, 161, 60 S. Ct. 146, 151, 84 L. Ed. 155 (1939). *See generally, Emerson, The System of Freedom of Expression* (1970), 6–7; Brennan, "The Supreme Court and the Meiklejohn Interpretation of the First Amendment," 79 *Harv. L. Rev.* 1 (1965); Kalven, "The New York Times Case: 'A Note on the Central Meaning of the First Amendment,'" 1964 *Sup. Ct. Rev.* 191 (1964).

We are thus not confronted with speech beyond the protection of the first amendment, nor even speech deserving ordinary protection of the first amendment, but rather speech

requiring quite extraordinary attention. Prof. Meiklejohn has properly stated this constitutional principle:

> • • • [The First Amendment] protects the freedom of those activities of thought and communication by which we "govern."
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> • • • • • • • •
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> In specific language of the Constitution, the governing activities of the people appear only in terms of casting the ballot. But in the deeper meaning of the Constitution, voting is merely the external expression of a wide and diverse number of activities by means of which citizens attempt to meet the responsibilities of making judgments, which freedom to govern lays upon them.
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> • • • • • • • •
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> The responsibilities mentioned are of three kinds. We, the people who govern, must understand the issues which, incident by incident, face the nation. We must pass judgment upon the decisions which our agents make upon those issues. And, further, we must share in devising methods by which those decisions can be made wise and effective or, if need be, supplanted by others which promise greater wisdom and effectiveness. • • • These are the activities to whose freedom [the First Amendment] gives unqualified protection. [Meiklejohn, "The First Amendment is an Absolute," 1961 *Sup. Ct. Rev.* 245, 255 (1961)].

The view expressed by Prof. Meiklejohn, that speech associated with the functioning of democratic processes deserves an extraordinary degree of protection, has been substantially adopted by the United States Supreme Court. *See Garrison v. Louisiana*, 379 *U. S.* 64, 85 S. Ct. 209, 13 L. Ed. 2d 125 (1964); *New York Times Co. v. Sullivan*, 376 *U. S.* 254, 84 S. Ct. 710, 11 L. Ed. 2d 686 (1964); Redish, "The First Amendment in the Marketplace: Commercial Speech and the Value of Free Expression," 39 *Geo. Wash. L. Rev.* 429 (1971); Brennan, "The Supreme Court and the Meiklejohn Interpretation of the First Amendment," 79 *Harv. L. Rev.* 1 (1965); Comment, "Privacy, Defamation, and the First Amendment," 67 *Colum. L. Rev.* 926 (1967).[2]

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[2]The position that speech associated with democratic processes deserves special protection from governmental regulation should not be confused with the wholly distinct issue of whether unwilling communications media can be required to give favored treatment to such speech. *E. g., Lehman v. Shaker Heights*, 418 *U. S.* 298, 94 S. Ct. 2714, 41 *L. Ed.* 2d 770 (1974); *Miami Herald Publishing Co. v. Tornillo*, 418 *U. S.* 241, 94 S. Ct. 2831, 41 *L. Ed.* 2d 730 (1974); *Columbia Broadcasting System, Inc. v. Democratic National Comm.*, 412 *U. S.* 94, 93 S. Ct. 2080, 36 L. Ed. 2d 772 (1973). The latter issue involves quite different considerations.

The Oradell ordinance, which, in its amended form, merely requires a single registration by each canvasser during each campaign, solely for purposes of identification, would, on its face, appear to impose no serious burden on the exercise of first amendment rights. A restrictive regulation, however, need not actually prohibit exercise of such rights to violate the first amendment. A regulation which may reasonably be anticipated to have the practical effect of discouraging some persons from exercising their first amendment rights, which "chills" exercise of those rights, is equally unconstitutional. *Gooding v. Wilson*, 405 *U. S.* 518, 92 S. Ct. 1103, 31 L. Ed. 2d 408 (1972); *Keyishian v. Bd. of Regents*, 385 *U. S.* 589, 87 S. Ct. 675, 17 L. Ed. 2d 629 (1967); *Baggett v. Bullitt*, 377 *U. S.* 360, 84 S. Ct. 1316, 12 L. Ed. 2d 377 (1964); *Speiser v. Randall*, 357 *U. S.* 513, 78 S. Ct. 1332, 2 L. Ed. 2d 1460 (1958); *cf. Dombrowski v. Pfister*, 380 *U. S.* 479, 85 S. Ct. 1116, 14 L. Ed. 2d 22 (1965).

The events of the past two and one-half years, revealed in the course of the proceedings that ultimately led to the resignation of the President of the United States and many of his closest advisors, demonstrate all too clearly the consequences that may befall persons who became identified as active advocates of political candidates or causes. The use of petty harassment, discriminatory enforcement of tax and regulatory laws, intensive surveillance by law enforcement agencies, and actual criminal depredations against persons identified with political adversaries is now familiar and well-documented.[3]

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[3]*See, e. g., House Jud. Comm., Impeachment of Richard Nixon, President of the United States*, H. R. Rep. No. 1305, 93d Cong. 2d Sess. (1974), documenting organization and implementation of an intelligence gathering plan directed against political opponents and

To similar effect, one may recall the history of the civil rights movement in the south. Persons who became identified as sympathetic to that political movement suffered "economic reprisal, loss of employment, threat of physical coercion, and other manifestations of public hostility," *NAACP v. Alabama ex rel. Patterson,* 357 *U. S.* 449, 462, 78 S. Ct. 1163, 1172, 2 L. Ed. 2d 1488 (1958), and public officials hostile to this political phenomenon engaged in a calculated and subtle strategy to suppress the movement by forcing public disclosure of the identities of its sympathizers. *See NAACP v. Alabama ex rel. Patterson, supra; Bates v. Little Rock,* 361 *U. S.* 516, 80 S. Ct. 412, 4 L. Ed. 2d 480 (1960); *Shelton v. Tucker,* 364 *U. S.* 479, 81 S. Ct. 247, 5 L. Ed. 2d 231 (1960).

These are, of course, the most familiar and spectacular examples of the risks to which identical advocates of political issues and candidates may be exposed. It would, though, be naive indeed to treat them as mere isolated and aberrational incidents.

The Oradell ordinance requires all political canvassers, including not only political candidates, who arguably assume a certain risk of the consequences of public exposure, but also persons who canvass on behalf of a political candidate or in conection with any political cause, to register with the police. The United States Supreme Court has repeatedly cautioned against placing local police officials in a position where they may, advertently or inadvertently, become active agents in the suppression of free speech. *See, e. g., Cox v. Louisiana,* 379 *U. S.* 536, 85 S. Ct. 453, 13 L. Ed. 2d 471 (1965); *Kunz v. New York,* 340 *U. S.* 290, 71 S. Ct. 312, 95 L. Ed. 280 (1951); *Saia v. New York,* 334 *U. S.* 558, 68 S. Ct. 1148, 92 L. Ed. 1574 (1948); *Schneider v. Irvington,* 308 *U. S.* 147, 60 S. Ct. 146, 84 L. Ed. 155 (1939).

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involving illegal wiretaps and breaking and entering, *id.* at 35–41, 157–70; attempts to instigate discriminatory Internal Revenue Service investigations of political opponents and their supporters, *id.* at 141–45; surveillance of political opponents by federal law enforcement agencies, *id.* at 146–47.

In light of these facts, it is not unreasonable that some persons may be dissuaded from exercising their first amendment rights where exercise of these rights is conditioned upon compliance with an ordinance such as the one before the Court in the present case. It is that substantial possibility which casts doubt on the constitutionality of this ordinance. The fact that the record does not reveal any pattern of harassment directed against plaintiff Hynes is, of course, irrelevant. It is the possible chilling effect of the ordinance that is constitutionally relevant, not the occurrence of any actual incidents of harassment. *Gooding v. Wilson, supra; Coates v. Cincinnati,* 402 *U. S.* 611, 91 S. Ct. 1686, 29 L. Ed. 2d 214 (1971); *cf. Dombrowski v. Pfister, supra.*

In a series of cases during the past 20 years, the Supreme Court has held that the first amendment protects the right of individuals to engage in political activity without giving up the shield of relative anonymity. In *Talley v. California,* 362 *U. S.* 60, 80 S. Ct. 536, 4 L. Ed. 2d 559 (1960), the Court struck down a municipal ordinance prohibiting the distribution of anonymous handbills, holding that the requirement that a name and address be printed on the leaflet may have a chilling effect on the exercise of first amendment rights. Similarly, it has held that politically controversial organizations cannot be required to disclose their membership lists to state officials. *Bates v. Little Rock, supra; NAACP v. Alabama ex rel. Patterson, supra,* and, absent a showing of a strong state interest, state employees cannot be required to disclose their membership in political organizations. *Shelton v. Tucker, supra. Cf. Lamont v. Postmaster General,* 381 *U. S.* 301, 85 S. Ct. 1493, 14 L. Ed. 2d 398 (1965); *Wulp v. Corcoran,* 454 *F.* 2d 826 (1 Cir. 1972); *Strasser v. Doorley,* 432 *F.* 2d 567 (1 Cir. 1970).

Defendant municipality suggests that this case is governed by *Laird v. Tatum,* 408 *U. S.* 1, 92 S. Ct. 2318, 33 L. Ed. 2d 154 (1972) and *Anderson v. Sills,* 56 *N. J.* 210 (1970), rather than by these cases. *Tatum* and *Anderson,* which in-

volved the possible chilling effect of military and State Police surveillance of activities which had the potential to cause mass civil disturbances, are distinguishable from the present case on a number of grounds. The government surveillance upheld in those cases did not extend to routine political activities but was focused on a limited class of activities threatening mass civil disturbance. In neither case did the parties even suggest that the type of activities complained of had ever been implicated in any actual attempts to interfere with exercise of first amendment rights. Most important, in neither case was the exercise of first amendment rights specifically conditioned (under pain of criminal prosecution) on the speaker's providing the information to the government which might be used for purposes of interference with his rights.

In my view, the Oradell ordinance has the potential to have a significant chilling effect on the exercise of first amendment rights and thus infringes on these rights. The proper rule applicable to this case was stated by the United States Supreme Court 30 years ago in *Thomas v. Collins*, 323 *U. S.* 516, 540, 65 S. Ct. 315, 327, 89 L. Ed. 430 (1945):

> If the exercise of the rights of free speech and free assembly cannot be made a crime, we do not think this can be accomplished by the device of requiring previous registration as a condition for exercising them and making such a condition the foundation for restraining in advance their exercise and for imposing a penalty for violating such a restraining order. So long as no more is involved than exercise of the rights of free speech and free assembly, it is immune to such a restriction. If one who solicits support for the cause of labor may be required to register as a condition to the exercise of his right to make a public speech, so may he who seeks to rally support for any social, business, religious or political cause. We think a requirement that one must register before he undertakes to make a public speech to enlist support for a lawful movement is quite incompatible with the requirements of the First Amendment.

This principle was forcefully reaffirmed in *Lamont v. Postmaster General, supra.* We are not free to abandon it here, and I would no do so even if we were.[4]

A regulation infringing on first amendment rights may be sustained only upon a demonstration that it is justified by a "compelling state interest." *Williams v. Rhodes*, 393 *U. S.* 23, 31, 89 S. Ct. 5, 21 L. Ed. 2d 24 (1968); *United States v. O'Brien*, 391 *U. S.* 367, 376–377, 88 S. Ct. 1673, 20 L. Ed. 2d 672 (1968); *NAACP v. Button*, 371 *U. S.* 415, 438–439, 83 S. Ct. 328, 9 L. Ed. 2d 405 (1963); *Thomas v. Collins*, 323 *U. S.* 516, 529–530, 65 S. Ct. 315, 89 L. Ed. 430 (1945). In the present case, the municipality contends that the ordinance is intended to facilitate apprehension of possible criminals. According to the affidavit of Chief of Police George Brugnoli, residents of Oradell have been instructed to report unknown canvassers and suspicious individuals to the police. The existence of the registration requirement permits the police to establish the identity of registered canvassers without investigation. While I do not doubt that this explanation is given in good faith and was the true motive for enactment of the ordinance, I find it a frail basis for the resulting infringement of first amendment rights.

The only information a canvasser is required by the ordinance to provide is his name. The ordinance is of no value when the police receive a report that a suspicious stranger has been seen or that an unfamiliar, unidentified canvasser

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[4] While the above discussion focuses principally on the rights of plaintiff Hynes, it should be noted that the other plaintiffs, voters in Oradell, have an equal and reciprocal constitutional right to hear the view of Hynes. *Kleindienst v. Mandel*, 408 *U. S.* 753, 762–763, 92 S. Ct. 2576, 33 L. Ed. 2d 683 (1972); *Stanley v. Georgia*, 394 *U. S.* 557, 564, 89 S. Ct. 1243, 22 L. Ed. 2d 542 (1969); *Lamont v. Postmaster General*, 381 *U. S.* 301, 307–308, 85 S. Ct. 1493, 14 L. Ed. 2d 398 (1965) (Brennan, J. concurring). The voter plaintiffs seek to preserve their opportunity for the "sustained, face-to-face debate, discussion and questioning" which the United States Supreme Court has recognized as deserving special protection. *Kleindienst v. Mandel, supra*, 408 *U. S.* at 765; 92 S. Ct. 2576; *Pell v. Procunier*, 417 *U. S.* 817, 823, 94 S. Ct. 2800, 2804, 41 *L. Ed.* 2d 495, 502 (1974).

is going from house-to-house. Even if a householder reports the canvasser's name and the police confirm that he has registered, the police know only that someone of that name claims to be canvassing for some cause. They know nothing about whether the cause is bona fide or whether the individual has a criminal record or criminal intentions, or even if he is who he claims to be. It is difficult to imagine any circumstances in which the information which the ordinance requires to be provided would be useful to the police in their efforts to prevent crime. Such a rationale does not rise to the level of "compelling state interest."

Nor can the municipality free itself from its burden of proof by characterizing the ordinance as a mere regulation of the time, place or manner of speech. It is, of course, well established that the state may make reasonable regulations concerning forms of speech which would grossly disrupt the normal usage of the location. *E. g., Grayned v. Rockford,* 408 *U. S.* 104, 92 S. Ct. 2294, 33 L. Ed. 2d 222 (1972) (disruption of school sessions); *Adderley v. Florida,* 385 *U. S.* 39, 87 S. Ct. 242, 17 L. Ed. 2d 149 (1966) (demonstration obstructing entrances to jail); *Cox v. Louisiana,* 379 *U. S.* 536, 554, 85 S. Ct. 453, 13 L. Ed. 2d 471 (1965) (obstruction of flow of traffic in urban business district); *Kovacs v. Cooper,* 336 *U. S.* 77, 69 S. Ct. 448, 93 L. Ed. 513 (1949) ("loud and raucous" use of a sound truck); *Cox v. New Hampshire,* 312 *U. S.* 569, 576, 61 S. Ct. 762, 85 L. Ed. 1049 (1941) (overlapping parades). Such regulations, however, must not only be neutral as to content, *Chicago Police Dept. v. Mosley,* 408 *U. S.* 92, 99, 92 S. Ct. 2286, 33 L. Ed. 2d 212 (1972). but they must not have the effect of substantially depriving any class of persons from exercising first amendment rights. *See Martin v. Struthers,* 319 *U. S.* 141, 63 S. Ct. 862, 87 L. Ed. 1313 (1943); *Lovell v. Griffin,* 303 *U. S.* 444, 58 S. Ct. 666, 82 L. Ed. 949 (1938); *cf. Williams v. Rhodes,* 393 *U. S.* 23, 89 S. Ct. 5, 21 L. Ed. 2d 24 (1968).

For a political candidate or an advocate of a political cause with small financial resources, personal door-to-door

canvassing is often the only practical means of reaching the voters. It is no solace to such people to suggest that they may conduct radio, television, or newspaper campaigns, that they may print campaign literature and distribute it on the street corners, or they may organize mass rallies. As the United States Supreme Court noted in holding unconstitutional an ordinance barring door-to-door solicitation:

> • • • [A]s every person acquainted with political life knows, door to door campaigning is one of the most accepted techniques of seeking popular support, while the circulation of nominating papers would be greatly handicapped if they could not be taken to the citizens in their homes. Door to door distribution of circulars is essential to the poorly financed causes of little people. [*Martin v. Struthers, supra* 319 *U. S.* at 146, 63 S. Ct. at 865].

Defendant does not deny that plaintiff Hynes had but limited means to carry on his campaign and was therefore forced to rely to a large degree on door-to-door canvassing. A person in Hynes' financial position who is dissuaded by the Oradell ordinance from canvassing door-to-door is, in effect, almost entirely insulated from the voters he must communicate with both to be elected to office and to competently perform his representative function once he is in office.

We must not be deceived by the seemingly innocuous character of the municipal ordinance before us.

> "It may be that it is the obnoxious thing in its mildest and least repulsive form; but illegitimate and unconstitutional practices get their first footing in that way, namely, by silent approaches and slight deviations from legal modes of procedure. This can only be obviated by adhering to the rule that constitutional provisions for the security of person and property should be liberally construed. A close and literal construction deprives them of half their efficacy, and leads to gradual depreciation of the right, as if it consisted more in sound than in substance. It is the duty of courts to be watchful for the constitutional rights of the citizen, and against any stealthy encroachments thereon." [*Lamont v. Postmaster General,* 381 *U. S.* 301, 309, 85 S. Ct. 1493, 1498, 14 L. Ed. 2d 398 (1965) (Brennan, J. concurring), quoting *Boyd v. United States,* 116 *U. S.* 616, 635, 6 S. Ct. 524, 29 L. Ed. 746 (1874)].

On its face the ordinance may not seem repulsive; but its respectability is suspect. It follows that we must be alert, careful and on guard against any deviations.

I would affirm.

For reversal and remandment—Chief Justice HUGHES and Justices JACOBS, MOUNTAIN, SULLIVAN and CLIFFORD—5.

For affirmance—Justices HALL and PASHMAN—2.

BOROUGH OF COLLINGSWOOD, PLAINTIFF-RESPONDENT, v. DONALD RINGGOLD AND JOHN C. ASHHURST, DEFENDANTS-APPELLANTS.

Argued November 20, 1973—Decided January 24, 1975.

SYNOPSIS

Defendants were convicted in the municipal court of violating ordinance prohibiting canvassing or soliciting without first registering with chief of police and procuring a permit. The Camden County Court, in de novo hearing, upheld convictions and defendants appealed. The Superior Court, Appellate Division, affirmed and defendants appealed. The Supreme Court, Clifford, J., held that the ordinance was not an invalid exercise of police power as applied to defendants who were canvassing for purpose of surveying listener preferences for radio stations; the ordinance did not impose an undue burden on interstate commerce, except insofar as it required applicants to state days, dates and route of business and required them to deposit registration card after each day's work; that the ordinance did not abridge First Amendment right of freedom of speech, except insofar as it imposed no standards to aid in determining when permits might issue in face of prior conviction of applicant or reported unethical business practices; and that the ordinance did not violate equal protection clause by setting different requirements for survey researches from those for charitable, religious, civic and political organizations.

Affirmed.

Pashman, J., concurred in result only and filed opinion.

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1. Municipal corporations ⇐122(2)
   Municipal enactment is presumed valid.

2. Municipal corporations ⇐122(2)

Municipal enactment may be held invalid only if presumption of validity is overcome by clear showing that it is arbitrary or unreasonable.

3. Municipal corporations ⇐122(2)

Presumption of validity of municipal enactment is overcome if it is constitutionally defective on its face.

4. Licenses ⇐6(13)

As long as requirements imposed by ordinance requiring advance registration of persons who solicit or canvass from house to house are substantially related to public good which it seeks to advance, police power of state is not overextended and act is within scope of grant of that power embodied by statute providing that municipality may make ordinances, not contrary to laws, as it may deem necessary and proper for good government, order and protection of persons and property and for preservation of public health, safety and welfare of municipality and its inhabitants. *N. J. S. A.* 40:48–2.

5. Licenses ⇐7(1)

Deterring use of soliciting and canvassing to gain access to homes for criminal purposes and maintaining quiet and privacy for residents of municipality are both "legitimate objects" of municipal concern, for purposes of determining validity of ordinance prohibiting canvassing or soliciting without first registering with chief of police and procuring a permit. *N. J. S. A.* 40:48–2.

6. Licenses ⇐7(1)

Borough of Collingswood's ordinance prohibiting canvassing or soliciting without first registering with chief of police and procuring a permit requires a ministerial issuance and does not permit any exercise of discretion whatsoever and is a valid exercise of police power.

7. Commerce ⇐67

If regulation of soliciting is a social regulation designed to protect local interests, different considerations apply in determining whether the burden on interstate commerce is undue or discriminatory than apply when the regulation is essentially economic in purpose and effect.

8. Commerce ⇐67

Fact that ordinance regulating canvassing did not discriminate against out-of-state canvassers to the favor of local or in-state businesses, but applied to "all persons," was not determinative of issue of whether as legitimate social regulation the ordinance was a burden on interstate commerce.

9. Commerce ⇐67

Municipalities have authority to regulate the business of soliciting and canvassing to protect the social well-being of community, even though such regulations touch upon interstate commerce.

10. Commerce ⇐67

Ordinance prohibiting canvassing or soliciting without first registering with police and procuring permit did not impermissibly burden interstate commerce insofar as it required registrant to give name, age and physical description, home and local address, name and address of organization for whom solicitation was made, description of nature of business, photographs of registrant, statement as to prior convictions, and descriptions of automobile and required registrant to carry registration certificate, but requirement that registrant state days, dates and route of business in municipality and deposit registration card after each day's work were restraints which cumulatively burdened interstate commerce.

11. Constitutional law ⇐90.1(1)

Speech is not unprotected by Constitution merely because it is uttered by a corporation as opposed to an individ-

ual or because it serves economic purposes of the corporate entity. *U. S. C. A. Const.* Amends. 1, 14.

12. Licenses ⇦6(13)

Municipality may license only purely commercial soliciting and condition the license upon specified standards relating to applicant's fitness to do business.

13. Licenses ⇦7(1)

Ordinance prohibiting canvassing or soliciting without first registering with chief of police and procuring a permit was invalid insofar as it authorized permit to be denied in event of prior conviction of applicant of crime, misdemeanor or disorderly conduct offense or reported unethical business practices, but imposed no standards to aid chief of police in deciding whether to grant permit or borough commissioners on review of chief's decision and gave chief and commissioners unlimited discretion. *U. S. C. A. Const.* Amends. 1, 14.

14. Licenses ⇦7(1)

Ordinance which regulates canvassing or soliciting by requiring registration is valid as an identification device.

15. Constitutional law ⇦90.1(1)
Licenses ⇦7(1)

Identification requirement of ordinance prohibiting canvassing or soliciting without first registering with chief of police and procuring a permit was sufficiently reasonable and neutral to withstand First Amendment constitutional attack and was legitimate tool in hands of municipality, particularly as applied to conduct of defendants engaged in canvassing house-to-house in connection with survey of listener preferences for radio stations. *U. S. C. A. Const.* Amend. 1.

16. Licenses ⇦7(2)

Ordinance prohibiting canvassing or soliciting without first registering with chief of police and procuring a permit did not establish impermissible classifications of house-to-house canvassers by fact that it imposed less stringent requirements on solicitations by members of charitable, religious, patriotic, philanthropic, or community organizations than was imposed on peddlers of wares or on surveyors, inasmuch as municipality's interest in not unduly burdening local community solicitation efforts justified minor differences as to amount of information required concerning identification of solicitor. *U. S. C. A. Const.* Amend. 14.

Mr. Emanuel Greenberg, of the New York bar, argued the cause for defendants-appellants (*Mr. Bryan B. McKernan,* attorney).

Mr. James A. Perrin, Municipal Prosecutor, argued the cause for plaintiff-respondent.

The opinion of the court was delivered by

CLIFFORD, J. The issue raised by this appeal is the constitutionality of the Borough of Collingswood's Ordinance No. 601, prohibiting canvassing or soliciting without first registering with the Chief of Police and procuring a permit.

In the municipal court defendants were convicted of violating the ordinance in question. The Camden County Court, in a *de novo* hearing on the record pursuant to *R.* 3:23–8(a), upheld the convictions, concluding that the ordinance was valid "both generally and as applied to these defendants." In an unreported *per curiam* opinion the Appellate Division affirmed for the reasons stated by the County Court. A substantial constitutional question having been raised, the appeal to this Court is as of right. *R.* 2:2–1(a)(1). We affirm.

Defendants were employed by a Pennsylvania subcontractor of Surveys Unlimited, a New York corporation, for the purpose of surveying listener preferences for radio stations. At approximately 9:30 P.M. on the evening of March 16, 1970, they went to the Parkview Apartments in Collingswood to interview residents there. They had not obtained a permit as required by the ordinance.

Appendix A

Mrs. Jeanne Powell, a resident of the Parkview Apartments, agreed to be interviewed. After answering a number of questions relating to radio station, television channel, newspaper and and coffee preferences, she became suspicious in light of the many inquiries concerning the times when she viewed or listened to programs. When the interviewer, defendant Ringgold, asked for her telephone number, her suspicions increased and she refused to provide it. The interview took place at the door to the Powell apartment and lasted about 15 minutes. During this time Mrs. Powell noticed a second man going from door to door in the building. Despite Mrs. Powell's suspicions, it is not argued here that the interview was anything but courteous, nor that defendants were attempting to sell anything, nor that they were carrying out any criminal or fraudulent schemes.

However, when Ringgold completed his interview and departed, Mrs. Powell called the police who quickly located defendants outside the apartment building. Upon being questioned by the police, defendants explained what they were doing and admitted having no permit, saying that they had been unaware of the permit requirement. They were then charged with the violation forming the basis of these proceedings.

The relevant ordinance reads in pertinent part as follows:

Section 1. No person except as provided herein shall canvass, solicit, distribute circulars or other matter, or call from door to door, or place to place, in the Borough of Collingswood without first registering with the Chief of Police, or in his absence, the officer in charge of the police department.

Section 2. * * * For the purpose of this ordinance a canvasser or solicitor shall also be deemed to be one who is not in the business of selling goods, but one who makes surveys for research purposes, analysis, opinion polls, rating data and any such similar work by which of its nature involves a door to door, or place to place activity, and shall include persons going from door to door or place to place for the purpose of contributions, donations, or alms, for any persons or organization.

Section 3. The purpose of this ordinance is to prevent fraud, crime and unethical and dishonest business practices, and for the general

Appendix A

protection, health and welfare of the residents of the Borough of Collingswood.

Section 4. Each registrant shall, at the time of registering, file with the Chief of Police, an application in writing which shall give the following information:

(a) Name, age and physical description of applicant.

(b) Complete permanent home and local address of applicant.

(c) Name and address of the organization or person for whom solicitation is being made.

(d) Description of the nature of the business and the goods, services, or wares to be sold, and sufficient information to determine whether or not the business he is to transact is interstate or intrastate commerce.

(e) Two (2) photographs of the applicant which shall be approximately 2½ inches by 2½ inches in size showing the head and shoulders of the applicant in a clear and distinguishing manner.

(f) The days, dates, and route of his business in the Borough of Collingswood (which shall be between the hours of 9:00 A.M. and 5:00 P.M.).

(g) A statement as to whether or not the applicant has been convicted of a crime, misdemeanor, or disorderly conduct offense, where and when so convicted, the nature of the offense and the penalty, if any.

(h) The make, model, year, color and license plate number of automobiles used by the applicant during the period of solicitation within the Borough, and the number of his driver's license and the state of issuance.

* * * * * * * *

Section 7. Each registrant shall carry the registration certificate at all times when in the Borough, and shall exhibit it to any citizen or police officer upon request. At the conclusion of each day's canvassing or soliciting the registration card shall be deposited with the Chief of Police.

Section 8. In the event an application for canvassing or soliciting is disapproved to [sic] the Chief of Police, for reasons of reported unethical business practices, or a previous conviction for a crime, the applicant may appeal to the Borough Commissioners, who shall set a time and place for a hearing, which hearing shall be held within ten days after appeal is taken by applicant, at which hearing applicant will be given an opportunity to present his reasons why the license should be issued. The decisions of the Borough Commissioners shall be final.

Section 9. * * * (b) No person subject to the provisions of this ordinance shall canvass, solicit or distribute circulars or other matter except during the hours of 9:00 A.M. and 5:00 P.M. Monday through Saturdays.

Section 10. Any person, organization or society or association of a charitable religious, patriotic, philanthropic or community nature

desiring to solicit or have solcited [sic] in its name money, property or financial assistance for which no merchandise, wares or services are required shall be exempt from Section 4 of this ordinance provided there s[sic] filed with the Chief of Police an application in writing giving the following information:

(1) Names of solicitors, and purpose or cause for which solicitation is being made.

(2) Names and addresses of the officers of the organization.

(3) Names and addresses of the agents or representatives who will solicit, canvass or distribute literature in the Borough.

(B) Each solicitor for such organization, society, or association shall carry proper identification, and shall display same upon request.

* * * * * * * *

Section 12. Any part or parts of this ordinance, if ever declared to be invalid, shall in no way or manner affect the validity of all remaining part, or parts of this ordinance, which shall continue in full force and effect.

Defendants challenge the ordinance on four constitutional grounds: (1) it is an invalid exercise of the police power as applied to them; (2) it imposes an undue burden on interstate commerce; (3) it abridges the First Amendment freedoms of speech and assembly; and (4) insofar as it sets different requirements for survey researchers from those for charitable, religious, civic and political organizations, it violates the equal protection clause of the Fourteenth Amendment.

We take up these contentions in that order. Our discussion of them amplifies our conclusion that the intention of the ordinance is to protect against a sense of unease and dangers reasonably to be apprehended on account of strangers filtering through the community. To give effect to that intention, since doubtless the municipal authorities would want the enactment to remain to the extent that it may, we have performed such judicial pruning as will render the ordinance constitutional. *State v. Zilo*, 54 *N. J.* 206, 218 (1969). See also *State v. Profaci*, 56 *N. J.* 346, 349–350 (1970); *State v. DeSantis*, 65 *N. J.* 462, 472–473 (1974).

I

[1–3] In evaluating defendant's position we are mindful of the traditional presumption of validity in favor of a municipal enactment, *e. g., Moyant v. Paramus*, 30 *N. J.* 528, 534 (1959), overcome by a showing that the ordinance is arbitrary or unreasonable, *Kozesnik v. Montgomery Twp.*, 24 *N. J.* 154, 167 (1957), or that it is constitutionally defective on its face. *E. g., City of Elizabeth v. Sullivan*, 100 *N. J. Super.* 51, 55, 58–59 (Cty. Ct. 1968).

[4] Constitutional infirmities aside, it is clear that a municipality may require advance registration of persons who solicit or canvass from house to house. *Mogolefsky v. Schoem*, 50 *N. J.* 588, 595 (1967); *Clifton v. Weber*, 84 *N. J. Super.* 333, 336 (App. Div. 1964), aff'd, 44 *N. J.* 266 (1965); *Moyant v. Paramus, supra*, 30 *N. J.* at 544. As long as the requirements imposed by such an ordinance are substantially related to the public good which it seeks to advance, the police power of the state has not been over-extended and the act is within the scope of the grant of that power embodied in *N. J. S. A.* 40:48–2. See *Schmidt v. Board of Adjustment of City of Newark*, 9 *N. J.* 405, 416 (1952); *Toms River Publishing Co. v. Manasquan*, 127 *N. J. Super.* 176, 181 (Ch. Div. 1974).

Defendants base their argument of invalid exercise of police power on a narrow reading of the ordinance. They interpret it as seeking to guard against only essentially fraudulent business practices. As applied to them they believe the ordinance to be overbroad and to impose upon their efforts strictures not reasonably related to the evil sought to be prevented. Their position is that the residents of Collingswood cannot fall victim to unethical business practices because defendants are not engaged in the business of selling; rather, they are conducting a market survey, the gathering of a "product" instead of the dispensing of one.

[5] However, Section 3 of the ordinance states a somewhat broader purpose: "to prevent fraud, crime and unethical and dishonest business practices *and* for the general

protection, health and welfare of the residents of the Borough of Collingswood" (emphasis added). Thus, defendants have overlooked two primary purposes of the enactment: (1) deterring the use of soliciting and canvassing to gain access to homes for criminal purposes, and (2) maintaining quiet and privacy for residents of the Borough. Both are "legitimate objects" of municipal concern. *Mogolefsky v. Schoem, supra,* 50 *N. J.* at 595.

[6] The means employed are neither unrelated to the objectives of the ordinance nor are they unreasonable. First, the identification requirements discourage resort to the subterfuge of canvassing as a means of furthering criminal purposes, whether immediate or sometime in the future. *Cf. Dziatkiewicz v. Maplewood,* 115 *N. J. L.* 37, 42 (Sup. Ct. 1935). Second, the registration certificate obtained by a canvasser affords a ready means of identification to both the resident and the police and serves to allay concern over the presence of an unfamiliar face in a neighborhood or on a doorstep. See *Mogolefsky v. Schoem, supra,* 50 *N. J.* at 595. Third, compliance is left mainly with the registrant who supplies the required information. While the Borough has circumscribed severely the discretion to refuse a permit, we interpret the ordinance, much as did the County Court, as permitting no exercise of discretion whatsoever and thus as requiring a ministerial issuance. See III, *infra.*

Defendants' challenge to the exercise of police power is misplaced; consequently, it is rejected.

II

Defendants next argue that requiring them to supply Collingswood police with detailed information has the cumulative effect, in light of the multiplicity of similar ordinances in other towns, of placing an unconstitutional burden on interstate commerce. However, not all burdens on interstate commerce are prohibited. The question here is whether the burden is undue or discriminatory. See, *e. g.,*

Nippert v. City of Richmond, 327 *U. S.* 416, 425, 66 S. Ct. 586, 590, 90 *L. Ed.* 760, 765 (1946).

[7] Where a regulation is not essentially economic in purpose and effect, as in *Nippert, supra,* but is instead a social regulation designed to protect local interests, different considerations apply. *Breard v. City of Alexandria,* 341 *U. S.* 622, 638, 71 S. Ct. 920, 930, 95 *L. Ed.* 1233, 1246 (1951). In *Breard* the Supreme Court distinguished social from economic interests as a rationale for burdening interstate commerce, and declined to void, on the basis of the commerce clause, an ordinance which declared the practice of soliciting or peddling from house to house without first obtaining permission from the individual homeowners to be a misdemeanor. The Court stated that the ordinance was justified by the city's "duty of protecting its citizens against the practices deemed subversive of privacy and of quiet." *Id.* at 640, 71 S. Ct. at 931, 95 *L. Ed.* at 1246–1247. It is just such local concerns that the Collingswood ordinance addresses.

[8] However, as a legitimate social regulation the Collingswood ordinance must still be examined for its cumulative effect on interstate commerce. See *Moyant v. Borough of Paramus, supra,* 30 *N. J.* at 550–551. The ordinance at hand does not discriminate against out-of-state canvassers to the favor of local or in-state businesses, for it applies to "all persons." But this is not determinatve of the issue. In *Nippert v. City of Richmond, supra,* an annual license tax of a fixed amount (plus a percentage determined from prior year's activity) was found to be invalid despite its stated similar treatment of local and out-of-state commerce. The Court found that the ordinance in question discriminated in favor of local businesses because of the general or cumulative burden imposed on interstate concerns who found it necessary to transact business in numerous localities, each of which could potentially enact a fixed license tax. See *id.,* 327 *U. S.* at 429–431, 66 S. Ct. at 592–594, 90 *L. Ed.* at 767–769. The effect of such multiplicity could work an exclusion on interstate commerce through an unacceptable financial bur-

den and consequent business discouragement. A similar conclusion was reached in *Moyant v. Borough of Paramus, supra,* which dealt with registration requirements of a $1000 bond, a $25 license tax, and a physician's certificate. Both cases, however, are distinguishable from the present one in that they imposed financial restrictions, having an immediate and obvious impact on interstate commerce.

[9] New Jersey cases have recognized the authority of municipalities to regulate the business of soliciting and canvassing to protect the social well-being of a community even though such regulations touch upon interstate commerce. For example, *Mount Holly Twp. v. Omar,* 51 *N. J. Super.* 201 (Cty. Ct. 1958), upheld a simple registration ordinance where the applicant was required to give his name, a photograph, other identifying matter and to pay a fee of $.75. In *State v. Mauer,* 75 *N. J. Super.* 90 (Cty. Ct. 1962), a more onerous enactment was invalidated on the grounds of a three-day waiting period and the potential cumulative burden compliance therewith would present when viewed in the light of requirements of other ordinances in surrounding communities. This position, however, was impliedly rejected in the later case of *Clifton v. Weber, supra,* where the Appellate Division refused to speculate as to the possible burden of similar ordinances in other municipalities and expressed the hope that co-operation among communities would reduce any cumulative effect. 84 *N. J. Super.* at 339. There, a conviction under an ordinance which required a $3 fee and an investigation period which took from 10 to 21 days was upheld.

[10] Compared with the comprehensive registration requirement sustained in *Clifton v. Weber, supra,* and those struck down in *Moyant v. Borough of Paramus, supra,* and *State v. Mauer, supra,* the Collingswood ordinance presents a picture of restraint; no fee is involved,[1] no fingerprinting

[1]We were informed by the municipal prosecutor at oral argument that while there is no fee applicable by the terms of Ordinance No. 601, the Borough does have a general fee ordinance which would apply

is necessary, and no investigatory period is established. We find, however, that the requirements of Section 4(f) of the ordinance relating to "the days, dates and route of * * * business" and the requirement of Section 7 respecting deposit of the registration card after each day's work are restraints which cumulatively burden interstate commerce. We invalidate the ordinance as to these provisions but find that the remaining requirements are neither undue nor discriminatory, and that as amended the ordinance survives so much of the challenge as is based on an impermissible burden on interstate commerce.

III

A more troublesome question presented by this appeal springs from the defendants' challenge alleging infringement of their rights under the First Amendment, made applicable to the states by the Fourteenth Amendment. On this issue we find the parties' positions at opposite extremes. The Borough contends that defendants were entitled to virtually no First Amendment protection at all under the circumstances, whereas defendants assert their activities were absolutely protected and not constitutionally susceptible of any infringement.

We attend first to the Borough's argument, which is to the effect that no First Amendment protection was afforded because defendants' occupation involved "commercial speech." See *Valentine v. Chrestensen,* 316 *U. S.* 52, 62 S. Ct. 920, 86 *L. Ed.* 1262 (1942)[2]; *cf. Allen v. McGovern,* 12 *N. J. Misc.*

to activities conducted under the ordinance in question; that the Borough officials had never collected any fee from registrants under this ordinance; and that in any event the general fee ordinance would be amended to render it inapplicable to those affected by Ordinance No. 601.

[2]Since *Valentine* the reported cases generally resist classifying as commercial any form of speech other than advertisements. *E. g., Pittsburg Press Co. v. Pittsburgh Comm. on Human Relations,* 413 *U. S.* 376, 93 S. Ct. 2553, 37 *L. Ed.* 2d 669 (1973); *United States v. Bob*

12 (Sup. Ct. 1933). While it is apparent that the ordinance, in part at least, addresses business-oriented pursuits, we believe it would be an unwarranted extension of the commercial speech doctrine to classify defendants' communication efforts wholly within that concept, thereby according them minimal constitutional protection or none at all.

[11] It is true that the speech involved here has commercial overtones since the surveys taken in Collingswood were to be sold for a profit and the employer of the two defendants is a commercial organization. Nevertheless, it is equally clear that speech is not unprotected merely because it is uttered by a corporation as opposed to an individual and because it serves the economic purposes of the corporate entity. See, *e. g., Thomas v. Collins,* 323 *U. S.* 516, 531, 65 S. Ct. 315, 323, 89 *L. Ed.* 430, 441 (1945); *cf. Breard v. Alexandria, supra,* 341 *U. S.* at 642, 71 S. Ct. at 932, 95 *L. Ed.* at 1248. See generally Redish, "The First Amendment in the Marketplace: Commercial Speech and Values of Free Expression," 39 *Geo. Wash. L. Rev.* 429 (1971). In any event we need not decide this case on the dubious distinction[3]

Lawrence Realty, Inc., 474 *F.* 2d 115, 121 (5th Cir.), *cert.* den., 414 *U. S.* 826, 94 S. Ct. 131, 38 *L. Ed.* 2d 59 (1973); *Banzhaf v. FCC*, 132 *U. S. App. D. C.* 14, 405 *F.* 2d 1082 (D. C. Cir. 1968), *cert.* den. 396 *U. S.* 842, 90 S. Ct. 50, 24 *L. Ed.* 2d 93 (1969); *Capital Broadcasting Co v. Mitchell*, 333 *F. Supp.* 582 (D. D. C. 1971), aff'd *sub. nom. Capital Broadcasting Co. v. Kleindienst*, 405 *U. S.* 1000, 92 S. Ct. 1289, 31 *L. Ed.* 2d 472 (1972); *United States v. Hunter*, 459 *F.* 2d 205 (4th Cir), *cert.* den., 409 *U. S.* 934, 93 S. Ct. 235, 34 *L. Ed.* 2 189 (1972); *Weaver v. Jordan*, 64 Cal. 2d 235, 49 *Cal. Rptr.* 537, 411 *P.* 2d 289, *cert.* den., 385 *U. S.* 844, 87 S. Ct. 49, 17 *L. Ed.* 2d 75 (1966); *United Advertising Corp. v. Borough of Raritan*, 11 *N. J.* 144 (1952); *Passaic Daily News v. Blair*, 63 *N. J.* 474 (1973); *Supermarkets General Corp. v. Sills*, 93 *N. J. Super.* 326 (Ch. Div. 1966). But see, *e. g., Hood v. Dun & Bradstreet, Inc.*, 486 *F.* 2d 25 (5th Cir. 1973); *George R. Whitten, Jr., Inc. v. Paddock Pools, etc., Inc.*, 424 *F.* 2d 25 (1st Cir. 1970); *Holiday Magic v. Warren*, 357 *F. Supp.* 20 (E. D. Wis. 1973).

[3]Justice Douglas has said that "[t]he [Chrestensen] ruling was casual, almost offhand. And it has not survived reflection." *Cammarano v. United States*, 358 *U. S.* 498, 514, 79 S. Ct. 524, 534, 3

between commercial and non-commercial speech, it being clear, as indicated, that at least some measure of First Amendment protection attaches here.

Defendants' First Amendment argument is that, as applied to their research survey activity, no registration requirement whatsoever may constitutionally be imposed. Further, they argue that as a consequence of its overbreadth the ordinance permits Borough officials to deny registration cards to canvassers and solicitors for arbitrary or otherwise improper reasons and that this submission to the undefined discretion of municipal authorities results in an abridgment of their right to freedom of speech.

Parenthetically, we note that defendants are not before this Court challenging the prospective validity of the ordinance, nor are they appealing from a refusal of Collingswood Borough to issue a registration card, nor does it appear from the record that they attempted to register as required. While concededly Ordinance No. 601 is not a model of clarity, nevertheless we conclude that it is sufficient on its face so that it could not properly be ignored with impunity by these defendants. See *Poulos v. New Hampshire,* 345 *U. S.* 395, 73 S. Ct. 760, 97 *L. Ed.* 1105 (1953); *Walker v. Birmingham,* 388 *U. S.* 307, 87 S. Ct. 1824, 18 *L. Ed.* 2d 1210 (1967). Defendants' conduct clearly falls within the proscription of this ordinance despite whatever infirmities therein might be exposed by judicial scrutiny, which defects we undertake to excise. *Cf. Broadrick v. Oklahoma,* 413 *U. S.* 601, 93 S. Ct. 2908, 37 *L. Ed.* 2d 830 (1973).

We first consider the seemingly broad sweep of activities embraced by Section 1: "no persons * * * shall * * * distribute circulars or other matter, or call from door to door, or place to place, in the Borough of Collingswood without first registering * * *." Were this Section read in a vacuum, it might conceivably be interpreted to include a re-

L. Ed. 2d 462, 472 (1959) (concurring opinion). But *cf. Lehman v. City of Shaker Heights*, 418 *U. S.* 298, 305, 94 S. Ct. 2714, 2718, 41 *L. Ed.* 2d 770, 778 (1974) (concurring opinion).

striction on canvassing, soliciting or distributing non-commercial materials in a public place by requiring prior registration — a legislative objective of doubtful validity. See *Lovell v. Griffin*, 303 *U. S.* 444, 58 S. Ct. 666, 82 *L. Ed.* 949 (1938); *Strasser v. Doorley*, 432 *F.* 2d 567, 569 (1st Cir. 1970) ("In the face of these burdens upon the exercise of first amendment rights, defendants point to no governmental interest of any importance that would be served by registration and identification."); *Wulp v. Corcoran*, 454 *F.* 2d 826 (1st Cir. 1972); *City of Elizabeth v. Sullivan*, *supra*; *compare Cantwell v. Connecticut*, 310 *U. S.* 296, 60 S. Ct. 900, 84 *L. Ed.* 1213 (1940), with *Thomas v. Collins*, *supra*. Read as a whole, however, the ordinance clearly delimits the proscribed activity. Thus, the title declares its purpose "to further control canvassing and soliciting;" Sections 3 and 8 have a business or commercial orientation; and Section 10 deals with non-commercial organizations specifically soliciting "money, property or financial assistance for which no merchandise * * * [is] required." Further, Section 2 narrowly describes the place-to-place nature of the activity which the ordinance seeks to regulate. We have declared the ordinance's purposes to be deterrence of gaining access to homes for criminal purposes and maintenance of quiet and privacy. The intention seems clear to address door-to-door activity on private property. "conduct of one limited kind." *Adderley v. Florida*, 385 *U. S.* 39, 42, 87 S. Ct. 242, 244, 17 *L. Ed.* 2d 149, 153 (1966). We adopt this "readily apparent construction." *Dombrowski v. Pfister*, 380 *U. S.* 479, 491, 85 S. Ct. 1116, 1123, 14 *L. Ed.* 2d 22, 31 (1965).

As thus construed the Collingswood ordinance undertakes generally to regulate activity which cannot be characterized as "pure speech." The enactment's focus on the door-to-door aspect, while assuredly not removing defendants' activity from the ambit of all First Amendment concerns, nevertheless shifts the emphasis to "conduct," traditionally surrounded with lesser protection than "pure speech." *Cox v.*

Louisiana, 379 *U. S.* 536, 555, 85 *S. Ct.* 453, 465, 13 *L. Ed.* 2d 471, 484 (1965). We repeat, this is not to say that no protection at all may be afforded or that an absolute prohibition of defendants' activities would be tolerated. Obviously that is not the purpose of this ordinance.

Persons desiring to canvass or solicit from door to door within the Borough may do so simply by identifying themselves to the Chief of Police. This is acomplished by providing information easily obtainable by the applicant. In no sense do the identification requirements "slip from the neutrality of time, place, and circumstance into a concern about content." *Police Dept. v. Mosley*, 408 *U. S.* 92, 99, 92 S. Ct. 2286, 2292, 33 *L. Ed.* 2d 212, 219 (1972) quoting from Kalven, "The Concept of the Public Forum: Cox v. Louisiana," 1965 *Sup. Ct. Review* 29). *Cf. Broadrick v. Oklahoma, supra*, 413 *U. S.* at 614–615, 93 S. Ct. at 2917–2918, 37 *L. Ed.* 2d at 841. The enactment does not strike at the heart of First Amendment protected activity, see *Lovell v. Griffin, supra*, 303 *U. S.* at 451, 58 S. Ct. at 668, 82 *L. Ed.* at 953, by conferring in licensing officials a "virtually unbridled and absolute power to prohibit" such activity. *Shuttlesworth v. Birmingham*, 394 *U. S.* 147, 150, 89 S. Ct. 935, 938, 22 *L. Ed.* 2d 162, 167 (1969).[4]

On close inspection, however, we do conclude that in one regard the ordinance undertakes to impose too broad discretion in the Chief of Police and the Borough Commis-

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[4]Ordinances similar in many respects to the Collingswood enactment have been voided because of an improper grant of discretionary power in licensing officials. *E. g., Schneider v. Irvington*, 308 *U. S.* 147, 164, 60 S. Ct. 146, 152, 84 *L. Ed.* 155, 166 (1939); *Evans v. LePore*, 26 *N. J. Misc.* 215, 216–217 (Sup. Ct. 1948). See *Cantwell v. Connecticut, supra*, 310 *U. S.* at 306, 308, 60 S. Ct. at 904, 905, 84 *L. Ed.* at 1219; *cf. Staub v. Baxley*, 355 *U. S.* 313, 322, 78 S. Ct. 277, 282, 2 *L. Ed.* 2d 302, 311 (1958); *Edgewater v. Cox*, 123 *N. J. L.* 212, 214–215 (E. & A. 1939): But see *Hughes v. Detroit*, 217 *Mich.* 567, 187 *N. W.* 530 (1922); *City of Washburn v. Ellquist*, 242 *Wis.* 609, 9 *N. W.* 2d 121, 10 *N. W.* 2d 292 (1943); *Village of Mogadore v. Coe*, 29 *Ohio O.* 2d 44, 197 *N. E.* 2d 570 (Ct. C. P. 1963).

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sioners. Section 4 and Section 8 deal with conviction of a "crime, misdemeanor, or disorderly conduct offense." Section 4 requires the applicant to give a written statement of such conviction, disclosing the nature of the offense, where and when the conviction occurred, and the penalty. Section 8 provides that in the event an application is disapproved by the Chief of Police because of conviction or reported unethical business practices, then an appeal may be taken to the Borough Commissioners. Thus, the ordinance does not mandate denial for certain particularized egregious conduct nor furnish any clue as to what standards the Chief may bring to bear on the issue of when to deny or when to grant a permit in the face of a conviction or reported unethical business practices. His discretion in this respect is entirely — and therefore improperly — unlimited. The same is true with respect to the Borough Commissioners in their review of the Chief's decision on appeal.

[12] A municipality may very well wish to license only purely commercial soliciting and condition the license upon specified standards relating to the applicant's fitness to do business. Just such an enactment was before this Court in *Moyant v. Paramus, supra,* where the norm of "satisfactory" as to an applicant's "character and business responsibility" was found to be "minimally sufficient." *Id.,* 30 *N. J.* at 554.

[13] Here, however, we are confronted with an ordinance that goes beyond commercial soliciting and imposes no standards to aid in determining when a permit may issue in the face of a conviction or reported unethical business practices. We therefore declare Section 8 to be invalid.

[14] In the final analysis all we are faced with in Ordinance No. 601 is an "identification device." Resort to this method of serving the interests sought to be protected here has received ample support in the dicta of prior decisions; our independent evaluation of the policy considerations therein convinces us that such a device is valid.

For example, in *Cantwell v. Connecticut, supra,* the United States Supreme Court explicitly stated that

> [w]ithout a doubt a state may protect its citizens from fraudulent solicitation by requiring a stranger in the community, before permitting him publicly to solicit funds for any purpose, to establish his identity and his authority to act for the cause which he purports to represent. [*Id.* 310 U. S. at 306, 60 S. Ct. at 904, 84 *L. Ed.* at 1219 (footnote omitted)].

And in the later case of *Martin v. City of Struthers,* 319 *U. S.* 141, 63 S. Ct. 862, 87 *L. Ed.* 1313 (1943), the Court approved the use of "identification devices [to] control the abuse of the privilege by criminals posing as canvassers." *Id.* at 148, 63 S. Ct. at 866, 87 *L. Ed.* at 1319–1320 (footnote omitted). The concurring opinion of Mr. Justice Murphy in *Martin* also noted that

> [n]o doubt there may be relevant considerations which justify considerable regulations of door to door canvassing, even for religious purposes, — regulation as to time, number and identifiaction of canvassers, etc., which will protect the privacy and safety of the home and yet preserve the substance of religious freedom. [*Id.* at 151, 63 S. Ct. at 867, 87 *L. Ed.* at 1321 (Murphy, J., joined by Douglas and Rutledge, JJ., concurring)].

See *Schneider v. Irvington, supra,* 308 *U. S.* at 165, 60 S. Ct. at 152, 84 *L. Ed.* at 166–167; *cf. NAACP v. Alabama,* 357 *U. S.* 449, 464, 78 S. Ct. 1163, 1172, 2 *L. Ed.* 2d 1488, 1500 (1958); *Breard v. Alexandria, supra,* 341 *U. S.* at 644–645, 71 S. Ct. at 933–934, 95 *L. Ed.* at 1249; *Moyant v. Paramus, supra,* 30 *N. J.* at 544–545.

Perhaps the strongest statement of approval of identification requirements, and most illustrative of the dichotomy between First Amendment privileged speech and conduct susceptible to reasonable registration requirements, is found in *Thomas v. Collins, supra.* There a state law which conditioned the right of a union organizer to solicit for membership upon the securing of a card was found to be a prior restraint upon the protected First Amendment right

"to make a public speech to enlist support for a lawful movement." *Id.*, 323 *U. S.* at 540, 65 S. Ct. at 327, 89 *L. Ed.* at 445. The Court went on to describe conduct which, however, was not so protected:

> Once the speaker goes further, however, and engages in *conduct which amounts to more than the right of free discussion comprehends*, as when he undertakes the collection of funds or securing subscriptions, he enters a realm where *a reasonable* registration or *identification requirement may be imposed*. [*Id.*, 323 U. S. at 540, 65 S. Ct. at 327, 89 *L. Ed.* at 446 (emphasis added)].

[15] In the balance between the right of the surveyors to collect data and the right of the Borough to protect its homeowners against crime and untoward invasions of privacy, the latter consideration deserves some weight. See *Martin v. City of Struthers, supra,* 319 *U. S.* at 143, 63 S. Ct. at 863, 87 *L. Ed.* at 1317; *Breard v. Alexandria, supra,* 341 *U. S.* at 644, 71 S. Ct. at 933, 95 *L. Ed.* at 1249; *cf. State v. Kolcz,* 114 *N. J. Super.* 408, 416 (Cty. Ct. 1971). We find that the identification requirement of the Collingswood ordinance is sufficiently reasonable and neutral to withstand constitutional attack and is a legitimate tool in the hands of municipalities, particularly as applied to defendants' conduct here.

The free speech incursion of Ordinance No. 601 is minimal due to the nature of the conduct regulated, the ministerial issuance required, the narrow construction given the ordinance and the neutral requirements imposed. As construed the ordinance successfully withstands First Amendment attack.

IV

Defendants' final contention is that the ordinance establishes two impermissible classifications of house-to-house canvassers in that Section 10 imposes less stringent requirements on members of charitable, religious, patriotic, philanthropic or community organizations who are soliciting

"money, property or financial assistance for which no merchandise * * * [is] required" than are imposed on peddlers of wares or on surveyors.

In its barest terms the Collingswood ordinance does not infringe upon door-to-door activity differently. The infringement, which we have construed above as being incidental and neutral, applies equally to both classes—that is, all persons who conduct door-to-door activity are required to identify themselves; no one one is exempt from that stricture. Thus, we are not faced with a categorization which "closely interwine[s] with First Amendment interests," *Police Dept. v. Mosley, supra,* 408 *U. S.* at 95, 92 S. Ct. at 2289, 33 *L. Ed.* 2d at 216, or which treats door-to-door conduct dissimilarly. See *id.*

The distinctions of which defendants complain deal simply with the quantum of information necessary to complete the identification process. In examining these differences application of a test based either on mere rationality or strict scrutiny is not called for; rather we adopt a "means-focused" standard. This narrows our inquiry to "the crucial question [of] whether there is an appropriate governmental interest suitably furthered by the differential treatment." *Id.* See Gunther, 'The Supreme Court, 1971 Term — Foreword: In Search of Evolving Doctrine on a Changing Court: A Model for a Newer Equal Protection," 86 *Harv. L. Rev.* 1, 20–24 (1972); *cf. Robinson v. Cahill,* 62 *N. J.* 473, 491–492 (1973).

Section 4 seeks information which is logical and necessary to the broad purpose of the ordinance but nonetheless collateral thereto. Section 10 excuses, in effect, described "charitable" solicitors from several of the information requirements of Section 4. Our view of the differences in the quantity of information being sought between Section 4 and Section 10 is that they are not differences of substance but of incidental scope.

[16] In this light we conclude that the exemptions parallel the Borough's expressed concern for their Little

League and other local community organizations. The more rigorous requirements of the general identification section might well work a real hardship on these local groups, where a large number of their solicitors are children. Most charities, unlike most business ventures, draw their solicitors from the immediate community and function in a highly localized manner. Moreover, recognized charitable, religious, and civic organizations can be expected to screen the qualifications of individuals who solicit funds for them.

We thus find that Collingswood's interest in not unduly burdening local community solicitation efforts is ample to justify the minor differences engendered in the ordinance before us. We consequently decline to void the ordinance on equal protection grounds.

V

Ordinance No. 601 of the Borough of Collingswood, as construed herein, is valid. If, with that construction, it continues to reflect the legislative intention of the municipal authorities, we strongly suggest that there be printed new copies of the enactment taking cognizance of the deletions we have effected. Not only would that be in keeping with the spirit of this opinion, but more importantly it would best serve those members of the public who might have occasion to seek guidance in the printed word.

The judgment of the Appellate Division upholding the convictions appealed from is:

Affirmed.

PASHMAN, J. (concurring). I concur with the majority in affirming the conviction of the defendants in this matter. I fully join in Parts I, II and IV of the majority opinion. I am, however, rather troubled by Part III, which concerns the possible infringement by the Collingswood ordinance upon rights protected by the first amendment to the federal constitution and *N. J. Const.* (1947) Art. I, ¶ 6, and while I concur in the result, I do so reluctantly and would decide

the case on much narrower grounds and with a much less expansive sweep than do my brethren.

It is now well established that "commercial speech" is not as completely protected by the first amendment[1] as other types of speech. *Eg., Pittsburgh Press Co. v. Pittsburgh Comm. on Human Relations,* 413 *U. S.* 376, 93 S. Ct. 2553, 37 *L. Ed.* 2d 669 (1973); *Capital Broadcasting Co. v. Kleindienst,* 405 *U. S.* 1000, 92 S. Ct. 1289, 31 *L. Ed.* 2d 472 (1972) affirming 333 *F. Supp.* (D. D. C. 1971) (3 judge court); *New York Times v. Sullivan,* 376 *U. S.* 254, 84 S. Ct. 710, 11 *L. Ed.* 2d 686 (1964); *Murdock v. Pennsylvania,* 319 *U. S.* 105, 63 S. Ct. 870, 87 *L. Ed.* 1292 (1943); *Jamison v. Texas,* 318 *U. S.* 413, 63 S. Ct. 669, 87 *L. Ed.* 869 (1943); *Valentine v. Chrestensen,* 316 *U. S.* 52, 62 S. Ct. 920, 86 *L. Ed.* 1262 (1942); *Hood v. Dun & Bradstreet, Inc.,* 486 *F.* 2d 25 (5 Cir. 1973), *cert.* denied 415 *U. S.* 985, 94 S. Ct., 1580, 39 *L. Ed.* 2d 882 (1974); *Rockville Reminder, Inc. v. United States Postal Service,* 480 *F.* 2d 4 (2 Cir. 1973); *United States v. Bob Lawrence Realty, Inc.,* 474 *F.* 2d 115 (5 Cir. 1973), *cert.* denied 414 *U. S.* 826, 94 S. Ct. 131, 38 *L. Ed.* 2d 59 (1974); *United States v. Hunter,* 459 *F.* 2d 205 (4 Cir. 1972), *cert.* denied 409 *U. S.* 934, 93 S. Ct. 235, 34 *L. Ed.* 2d 189 (1972); *George R. Whitten, Jr., Inc. v. Paddock Pools, Inc.,* 424 *F.* 2d 25 (1 Cir. 1970), *cert.* denied 400 *U. S.* 850, 91 S. Ct. 54, 27 *L. Ed.* 2d 88 (1970); *Banzhaf v. F. C. C.,* 132 *U. S.* App. D. C. 14, 405 *F.* 2d 1082 (D. C. Cir. 1968), *cert.* denied 396 *U. S.* 842, 90 S. Ct. 50, 24 *L. Ed.* 2d 93 (1969); *Boscia v. Warren,* 359 *F. Supp.* 900 (E. D. Wis. 1973); *Holiday Magic, Inc. v. Warren,* 357 *F. Supp.* 20 (E. D. Wis. 1973); *Sunday Mail, Inc. v. Christie,* 312 *F.*

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[1]Defendants do not suggest that *N. J. Const.* (1947) Art. 1, ¶ 6 affords them more protection than does the first amendment, and therefore I see no need to pursue that issue here. We are, of course, not bound to limit the protection provided by our State constitution to that provided by the federal constitution. *Robinson v. Cahill,* 62 *N. J.* 473 (1973) *cert.* denied 414 *U. S.* 976, 94 S. Ct. 292, 38 L. Ed. 2d 219 (1973).

Supp. 677 (C. D. Cal. 1970); *Passaic Daily News v. Blair*, 63 *N. J.* 474 (1973); *United Advertising Corp. v. Raritan*, 11 *N. J.* 144 (1952); *Supermarkets General Corp. v. Sills*, 93 *N. J. Super.* 326 (Ch. Div. 1966); *see Breard v. Alexandria*, 341 *U. S.* 622, 71 S. Ct. 920, 95 *L. Ed.* 1233 (1951)[2]. The distinction is a logical corollary of the modern understanding of the first amendment as primarily protecting communication of ideas and promoting the operation of democratic processes. *Holiday Magic, Inc. v. Warren, supra*, 357 *F. Supp.* at 25–26. *See generally*, Brennan "The Supreme Court and the Meiklejohn Interpretation of the First Amendment," 79 *Harv. L. Rev.* 1 (1965).

The boundaries of commercial speech have proven somewhat difficult to fix, *see generally, Holiday Magic, Inc., supra* at 25; Note, "Freedom of Expression in the Commercial Context," 78 *Harv. L. Rev.* 1191 (1965). The mere fact that speech is uttered by a corporation or association organized for economic gain, *Thornhill v. Alabama*, 310 *U. S.* 88, 60 S. Ct. 736, 84 *L. Ed.* 1093 (1940) (union); *Grosjean v. American Press Co.*, 297 *U. S.* 233, 56 S. Ct. 444, 80 *L. Ed.* 660 (1935) (newspaper corporation); *First National Bank of Boston v. Attorney General, Mass.*, 290 *N. E.* 2d 526 (Mass. Sup. Jud. Ct. 1972) (bank corporation), or that the primary purpose of the speech itself is economic gain, *Smith v. California*, 361 *U. S.* 147, 150, 80 S. Ct. 215, 4 *L. Ed.* 2d 205 (1959); *Thomas v. Collins*, 323 *U. S.* 516, 65 S. Ct. 315, 89 *L. Ed.* 430 (1945), does not in and of itself

[2]The doctrine has, of course, not gone without criticism. *See Cammarano v. United States*, 358 *U. S.* 498, 513–515, 79 S. Ct. 524, 3 L. Ed. 2d 462 (1959) (Douglas, J. concurring); *Dun & Bradstreet, Inc. v. Grove*, 404 *U. S.* 898, 92 S. Ct. 204, 30 L. Ed. 2d 175 (1971) (Douglas, J. dissenting from denial of certiorari); *Pittsburgh Press Co. v. Pittsburgh Comm. on Human Relations, supra*, 413 *U. S.* at 397–400, 93 S. Ct. 2553, 37 L. Ed. 2d 669 (Douglas, J. dissenting); Redish, "The First Amendment in the Marketplace: Commercial Speech and the Values of Free Expression," 39 *Geo. Wash. L. Rev.* 472 (1971). After *Pittsburgh Press*, though, its continued validity scarcely seems in doubt.

deprive the speech of first amendment protection. The test, as enunciated in *New York Times v. Sullivan, supra*, 376 *U. S.* at 266, 84 S. Ct. 710 and *Pittsburgh Press Co. v. Pittsburgh Comm. on Human Relations, supra*, 413 *U. S.* at 385, 93 S. Ct. 2553, flows more directly from the conceptual foundations of the distinction: Speech is "commercial" if it occurs in a commercial context and does not involve a bona fide attempt to communicate information, express opinion, recite grievances or protest claimed abuses concerning matters of public interest.

In this case, the speech involved was that of persons engaged in taking an opinion poll surveying listener preferences for a radio station. The polltakers were not attempting to communicate any ideas; they were hired merely to assist the radio station in its efforts to acquire greater advertising revenues.

Characterizing speech as "commercial" does not necessarily deprive it of all first amendment protections. At the very least, however, it frees the municipality from the onus of having to demonstrate that the ordinance is justified by a "compelling state interest" as it ordinarily must in first amendment cases. *Williams v. Rhodes*, 393 *U. S.* 23, 89 S. Ct. 5, 21 *L. Ed.* 2d 24 (1968); *United States v. O'Brien*, 391 *U. S.* 367, 376–377, 88 S. Ct. 1673, 20 *L. Ed.* 2d 672 (1968); *NAACP v. Button*, 371 *U. S.* 415, 438, 83 S. Ct. 328, 9 *L. Ed.* 2d 405 (1963); *Thomas v. Collins*, 323 *U. S.* 516, 529–530, 65 S. Ct. 315, 89 *L. Ed.* 430 (1945). The ordinance is rationally related to the legitimate ends of protecting residents against crime and invasions of their privacy. *Moyant v. Paramus*, 30 *N. J.* 528 (1959). Stripped of provisions which are recognized by the majority as unconstitutional, the ordinance in this case is no more objectionable than the one upheld in *Breard v. Alexandria*, 341 *U. S.* 622, 71 S. Ct. 920, 95 *L. Ed.* 1233 (1951), which, in effect, entirely prohibited commercial canvassing. In my view, that case is dispositive of the facts before the Court today.

The majority chooses not to rely on the "commercial speech" doctrine, characterizing it as "dubious."[3] *Ante* at 362–363. While I share the majority's lack of enthusiasm for this distinction and am not all sure that I would have chosen to create it if we were writing on a clean slate, the analysis adopted by the majority seems to me still less satisfactory. Rather than recognizing that municipalities may regulate commercial speech more strictly than they may regulate other types of speech, the majority attempts to find a rationale within the first amendment to uphold the ordinance which would be applicable to all forms of speech. Such an effort is not only unnecessary, but, as I have elaborated in my opinion in *Hynes v. Mayor and Council of Oradell*, 66 *N. J.* 376 (1974), also decided today, leads the Court in that case to uphold what are, in my view, clearly unconstitutional restrictions on protected speech. Indeed, even the "pruned" Collingswood ordinance, which is ostensibly directed at commercial speech, may be unconstitutional insofar as it sweeps in (inadvertently I suspect) protected speech, *e. g.*, opinion polls conducted by elected officials for purposes of informing themselves of the views of their constituents or by newspaper seeking to determine the attitudes of

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[3]The majority apparently relies on the opinions of Justice Douglas and the view that cases subsequent to *Valentine v. Chrestensen*, *supra*, have generally restricted the doctrine to advertisements. The cases do not uniformly support the latter view. *See Hood v. Dun & Bradstreet, Inc.*, 486 *F.* 2d 25 (5 Cir. 1973) (credit report); *Rockville Reminder, Inc. v. U. S. Postal Service*, 480 *F.* 2d 4 (2 Cir. 1973) (attachment of private receptacles to rural mailboxes); *George R. Whitten, Jr., Inc. v. Paddock Pools, Inc.*, 424 *F.* 2d 25 (1 Cir. 1970) (solicitation of government officials); *Boscia v. Warren*, 359 *F. Supp.* 900 (E. D. Wis. 1973) (trade name); *Holiday Magic v. Warren*, 357 *F. Supp.* 20 (E. D. Wis. 1973) (solicitation of sales in pyramid scheme); *Sunday Mail, Inc. v. Christie*, 312 *F. Supp.* 677 (C. D. Cal. 1970) (distribution of newspapers). *Compare Breard v. Alexandria*, 341 *U. S.* 622, 71 S. Ct. 920, 95 L. Ed. 1233 (1951) *with Martin v. Struthers*, 319 *U. S.* 141, 63 S. Ct. 862, 87 L. Ed. 1313 (1943) (house-to-house solicitation). The eloquent concurrences and dissents of Justice Douglas are just that.

the public on significant issues. *See Talley v. California*, 362 *U. S.* 60, 80 S. Ct. 536, 4 *L. Ed.* 2d 559 (1960); *Thomas v. Collins*, *supra*, 323 *U. S.* at 540, 65 S. Ct. 315; *Wulp v. Corcoran*, 454 *F.* 2d 826 (1 Cir. 1972); *Strasser v. Doorley*, 432 *F.* 2d 567 (1 Cir. 1970). Construing the ordinance so as to render it constitutional (*See State v. Zito*, 54 *N. J.* 206, 218 (1969)) I would exclude such protected activities from coverage under sections 1 and 2 of the Collingswood ordinance.

I concur in the result only.

PASHMAN, J., concurring in the result.

For affirmance—Justices JACOBS, HALL, SULLIVAN, PASHMAN and CLIFFORD and Judges CONFORD and COLLESTER—7.

For reversal—None.

APPENDIX B

Per Curiam Opinion of the Superior Court of New Jersey, Appellate Division

(Filed—May 15, 1974.)

Argued April 23, 1974—Decided May 15, 1974.

Before Judges Carton, Lora and Seidman.

On appeal from Superior Court, Law Division, Bergen County.

Mr. James A. Major, II argued the cause for appellants (*Messrs. Major and Major,* attorneys).

Mr. Melvin R. Solomon argued the cause for respondents (*Mr. Ned J. Parsekian,* attorney).

Per Curiam

Defendant Borough of Oradell appeals from a judgment striking down as void and unconstitutional its ordinance which, in pertinent part, reads as follows:

> Section 1 (a): *Exceptions to Permit*
>
> Any person desiring to canvass, solicit or call from house to house in the Borough for a recognized charitable cause, or any person desiring to canvass, solicit or call from house to house for a Federal, State, County or Municipal political campaign or cause, shall be required to register with the Police Department for identification only. The provisions of this section shall apply to representatives of Borough Civil Groups and

Organizations and any veteran honorably discharged or released under honorable circumstances from active service in any branch of the Armed Forces of the United States. All other sections of Ordinance No. 573 shall not be applicable to such persons or groups as designated herein.

• • •

In form, the ordinance is an amendment and supplement to Section 1 of the municipality's ordinance requiring a permit to canvass or solicit or call from house to house in the Borough for the purpose of selling goods or attempting to sell goods by sample or take orders for the future delivery of goods or services. The basic ordinance requires the applicant to file an application providing various items of information upon the basis of which the Borough Clerk is empowered to issue a written permit setting forth the name and address, photograph, thumbprint of the permittee, the kind of goods or services to be sold or performed and the date of issuance and expiration date.

Plaintiff Hynes, who is the principal plaintiff in the present action, is an Assemblyman resident in District 38 in Central Bergen County. Under the general reapportionment of 1973 the area in which he resided became a part of that district. His complaint and supporting affidavit aver that he entered the Borough in March 1973 to conduct door-to-door campaigning, but was stopped by a member of the Oradell police force and asked to leave the Borough. The present action ensued.

The trial judge expressed three reasons for finding the ordinance to be void: (1) that it contained no penalty pro-

vision and was indeed drafted specifically to eliminate the penalty; (2) that it was vague, overbroad and subject to many different types of terms as to what was and what was not required, and (3) that municipalities have no power to limit or regulate the activities of political candidates. The trial judge commented: "• • • I think it's clear that candidates for political office have an absolute right to go door to door, ring doorbells, and solicit votes, wherever, whenever they choose to • • •," subject to the State's right to control under criminal statute.

The Borough concedes that the failure to include a penalty provision in the ordinance is a fatal defect. Consequently, the judgment must be affirmed for this reason.

Although we deem it appropriate to affirm on this narrow ground, our doing so is not to be construed as implying that the mere addition of a penalty clause would be sufficient to validate the ordinance. There is no need for us at this time to resolve the important issues of whether and to what extent a municipality may regulate door-to-door canvassing for political or civic purposes, especially since we do not know whether the ordinance will be readopted at all, or, if it is, whether it will be in its present form except for the added penalty clause, or whether it will be revised or modified in some other fashion.

Affirmed.

APPENDIX C

Decision Supreme Court of New Jersey, Bergen County (Smith, J.C.C.) October 18, 1973

(Transcript of Oral Decision)

The Court: Gentlemen, this is a return date of an order to show cause concerning an attack on the validity of an ordinance that was enacted by the Borough of Oradell. The ordinance as we have been discussing this morning provides for registration for identification purposes by people seeking to canvass, or call house to house for charitable cause, or in connection with campaigning for political office.

Now, at the outset, of course, we have staring us smack in the face the usual problem with First Amendment Rights, with the Right of Freedom of Speech. Is it absolute? When can it be regulated, and what controls are valid, what controls are not valid, ever since Oliver Wendell Holmes in the old days.

I think the earliest case that's complained about and quoted in all of the cases concerning, I think, the Boston Fire Department or the Boston Police Department Case, where he said, "you have a right, an absolute right of freedom—you have a right of freedom of speech. You can't yell fire in a crowded theater and cause a stampede. There has to be some sort of reasonable restraint on your freedom of speech, and it's a restriction that has to be imposed guardedly, and the subject of much litigation," and as both attorneys have pointed out, what I find to be excellent briefs, cases that hold all sides of the coin depending how you interpret each particular situation.

What we have now, basically, is the question of counting municipalities. Not the State, not the County municipalities, or can the municipalities enact a requirement for registration of political candidates before they go into the town to canvass door to door I find this ordinance void.

At the outset,—and I have three reasons for doing so. I'll take them in the inverse order, I suppose to their incorporate number. One, is the reason I just pointed out by way of argument. I first find no penalty, nor do I take to enforce this; it happened to be drafted. The drafters of it eliminated the penalty pretty specifically, so that if you look at it, what good is it, because if the fellow doesn't comply with it, you can't do a thing about it; they did not provide for a penalty.

Secondly, the ordinance is vague, overbroad, subject to too many different types of terms, as to what is, and what isn't required. I think that that fails to satisfy a statute of constitutional criteria.

Thirdly, I find that it has no relationship to the municipalities' reguiatory authority concerning the safety, public safety of the residents. What in fact it does is require a registration situation for people who were engaged in a lawful activity. The municipalities have no power to limit or regulate the activities of political candidates. I find that I think it's clear that candidates for political office have an absolute right to go door to door, ring doorbells, and solicit votes, wherever, whenever they choose to, subject to the state like criminal statute that might control somebody from harassing, intervening with peoples' property or privacy outside of the criminal statutes.

I think that a candidate for office has an absolute right to conduct himself in any manner he sees fit when he goes about to solicit votes, so that there's an attempt to regulate this activity as it relates to the public safety; there is no relationship.

As I indicated, it seems to the Court, to be a very real problem, and I don't close my eyes to that problem, a

very real problem of breaking and entering. It singles out one type of activity where people may be coming into town, non residents, and seeks to have them register, and as I indicated before, I think you get awfully close where you want to require police identification cards to show wherever you walk. I don't think that it's any more proper to require registration for a political candidate going door to door. There's no relationship between street crime and canvassing door to door for votes, so that this attempted type of regulation, although it's just, all the registration situation is, in my opinion, basically clear, and again equably an infringement upon the First Amendment Rights of people running for office and soliciting votes, therefore, I find the ordinance itself, is unconstitutionel, void, and unenforceable.

Submit a judgment.

Appendix C

Judgment

(Filed—October 23, 1973)

This matter having been brought before the Court on the return date of the Order to Show Cause by Ned J. Parsekian, Esq., attorney for the Plaintiffs (Melvin R. Solomon, Esq., appearing), and Major & Major, Esqs., attorneys for the Defendants, (James A. Major II, Esq. appearing) and the Court having reviewed the Verified Complaint, Answer and Affidavit filed in this complaint, having reviewed the ordinance in question and having heard the arguments of counsel,

It is on this 18th day of October, 1973,

Ordered and Adjudged that Ordinance No. 598, "An Ordinance to Amend and Supplement an Ordinance Entiled 'An Ordinance to Regulate and Prohibit Canvassing and Soliciting in the Borough of Oradell and Establish Fees and Provide Penalties for the Violation Thereof,'" of the Borough of Oradell is hereby declared to be void and unconstitutional; and

It is Further Ordered and Adjudged that judgment is entered in favor of the Plaintiffs, Edward H. Hynes, Hugh Stier, Anthony Barone, Maritza Kougasian and Susan DePrima, without cost in the above entitled matter.

Harvey Smith, J.S.C. T/A

I hereby consent to the entry of said Judgment.

Major & Major, Esqs.
Attorneys for the Defendants

(s) James A. Major II

APPENDIX D

Notice of Appeal

(Filed in Supreme Court of New Jersey,
April 16, 1975)

Notice of Appeal to the Supreme Court of the United States

Notice is hereby given that Edward H. Hynes, Hugh Stier, Anthony Barone, Maritza Kougasian and Susan De Prima, the appellants above named, hereby appeal to the Supreme Court of the United States from the final judgment of the Supreme Court of the State of New Jersey, reversing the judgment of the Appellate Division of the Superior Court of New Jersey and remanding the matter to Chancery Division of that Court for entry of judgment in favor of defendants, entered in this action on January 24, 1975. This appeal is taken pursuant to 28 U.S.C. §1257(2).

McCann & McCann,
Attorneys for Appellants,
By: Edmund V. McCann, Partner
291 Main Street
Ridgefield Park, New Jersey

APPENDIX E

The Borough of Oradell
Ordinance No. 573

An Ordinance to Regulate and Prohibit Canvassing and Soliciting in The Borough of Oradell and Establish Fees and Provide Penalties for the Violation Thereof.

Be It Ordained by the Borough Council of The Borough of Oradell, in the County of Bergen, New Jersey, as follows:

Section 1. Permit Required

No person shall canvass or solicit or call from house to house in the Borough to sell or attempt to sell goods by sample or to take or attempt to take orders for the future delivery of goods, merchandise, wares, or any personal property of any nature whatsoever, or take or attempt to take orders for services to be furnished or performed in the future, without first having received a written permit therefor.

Section 2. Application for Permit: Contents Thereof.

a) Any person desiring a permit to canvass or solicit in the Borough shall file, on a form to be supplied by the Borough Clerk, an application with the Borough Clerk stating:

(1) Name of applicant;

(2) Permanent home address;

(3) Name and address of employer or firm represented;

(4) Place or places of residence of the applicant for the preceding three years;

(5) Date on which he desires to commence canvassing or soliciting;

(6) Nature of merchandise to be sold or offered for sale or the nature of the services to be furnished;

(7) Whether or not the applicant has ever been convicted of a crime, misdemeanor, or violation of any ordinance concerning canvassing or soliciting, and if so, when, where and the nature of the offense;

(8) Names of other communities in New Jersey in which applicant has worked as a solicitor or canvasser in the past 2 years.

b) Said application shall also be accompanied by a letter or other written statement from the individual, firm or corporation employing the applicant, certifying that the applicant is authorized to act as the employer's representative.

c) No such application shall be filed more than 3 months prior to the time such canvassing or soliciting shall commence.

Section 3. Application Fee

Upon the filing of the application, the sum of $15.00 shall be paid by the applicant to the Borough Clerk, $5.00 to be used by the Borough to defray the cost of investigating, photographing, finger printing, processing and issuing said permit; the balance of $10.00 to be returned to the applicant upon the surrender of the permit to the Borough Clerk.

Section 4. Investigation: Issuance of Permit

The Borough Clerk shall give a copy of the application to the Chief of Police who shall cause such investigation to be made of the applicant's business and moral character as he deems necessary for the protection of the public good. He shall use any information available in other New Jersey cities, towns or boroughs, where the applicant has canvassed or solicited within 2 years last past.

This investigation shall include the photographing and finger printing of the applicant. If, as a result of such investigation, the applicant's character and business responsibility is found to be unsatisfactory, the Chief of Police shall endorse his disapproval and the reasons therefor on the copy of the application, return it to the Borough Clerk and the permit shall not issue. If, as a result of such investigation, the applicant's character and business responsibility is found to be satisfactory the Chief of Police shall endorse his approval on the copy of the application, return it to the Borough Clerk who shall execute a permit to be issued to the applicant. Said permit shall be issued upon completion of the investigation, if approved by the Chief of Police. If the application is then disapproved all deposits shall be returned immediately.

Section 5. Permit: Term

The permit shall show the name, address, photograph and thumb print of the permittee, the kind of goods or services to be sold or performed thereunder, the date of issuance and the date on which said permit shall expire, which shall be December 31st of the year in which issued.

This permit is not transferable; permittees shall not work before 9:00 A.M. nor after 5:00 P.M.; the permit must be carried and shown upon request; permittees shall not canvass or solicit at rear doors; this permit must be surrendered when no longer used by permittee or on expiration date. The permit shall be signed and sealed by the Borough Clerk.

Section 6. Penalty

Any person, firm or corporation violating any provision of this ordinance shall, upon conviction thereof, be fined in an amount not exceeding $500.00 or be imprisoned in the County Jail for a period not exceeding ninety (90) days, or be both fined and imprisoned. Each day said violation is permitted or is permitted to continue, shall constitute a separate offense and shall be subject to a penalty hereunder.

Section 7. Severance Clause

If any section, subsection, or sentence or phrase of this ordinance is for any reason held to be unconstitutional or invalid, such decision shall not affect the remaining portions of this ordinance.

Section 8. Repealer Clause

Ordinance No. 247 and section 9-15 through section 9-28 of Ordinance 427 entitled "The Revised Ordinances of The Borough of Oradell" are hereby repealed and all other ordinances or parts or ordinances which are inconsistent with the provisions of this ordinance are hereby repealed to the extent of such inconsistency.

Section 9. Effective Date

This ordinance shall take effect after passage and publication as required by law.

THE BOROUGH OF ORADELL

ORDINANCE NO. 598

AN ORDINANCE TO AMEND AND SUPPLEMENT AN ORDINANCE ENTITLED "AN ORDINANCE TO REGULATE AND PROHIBIT CANVASSING AND SOLICITING IN THE BOROUGH OF ORADELL AND ESTABLISH FEES AND PROVIDE PENALTIES FOR THE VIOLATION THEREOF."

BE IT ORDAINED by the Borough Council of The Borough of Oradell, in the County of Bergen and State of New Jersey, that an ordinance entitled "An ordinance to regulate and prohibit canvassing and soliciting in the Borough of Oradell and establish fees and provide penalties for the violation thereof" be amended and supplemented as follows:

(1) That Section 1 be amended and supplemented by the addition of Section 1 (a) to be entitled "Exceptions to Permit" as hereinafter set forth:

SECTION 1 (a): *Exceptions to Permit*

Any person desiring to canvass, solicit or call from house to house in the Borough for a recognized charitable cause, or any person desiring to canvass, solicit or call from house to house for a Federal, State, County or Municipal political campaign or cause, shall be required to register with the Police Department for identification only. The provisions of this section shall also apply to representatives of Borough Civic Groups and Organizations and any veteran honorably discharged or released under honorable circumstances from active service in any branch of the Armed Forces of the United States. All other sections of Ordinance No. 573 shall not be applicable to such persons or groups as designated herein.

2. All ordinances or parts of ordinances inconsistent with this ordinance are hereby repealed.

3. This ordinance shall take effect after final passage and publication as required by law.

APPENDIX F

Verified Complaint

(Filed—October 15, 1973.)

Plaintiffs, Edward H. Hynes, residing at 351 Maywood Avenue, Maywood, New Jersey, Hugh Stier, residing at 888 Bellis Parkway, Oradell, New Jersey, Anthony Barone, residing at 859 Bellis Parkway, Oradell, New Jersey, Maritza Kougasian, residing at 823 Fletcher Avenue, Oradell, New Jersey, and Susan DePrima, residing at 620 Lake Avenue, Oradell, New Jersey, by way of Complaint against the Defendants, hereby state:

First Count

1. Plaintiff Edward H. Hynes is a member of the General Assembly of the State of New Jersey, having been elected to that position on November 9, 1971, for a term commencing January 20, 1972.

2. At that time Plaintiff Hynes was elected to represent District 13E which consisted of several towns in central Bergen County.

3. Under the general statewide reapportionment instituted in early 1973, the Plaintiff's hometown of Maywood along with the vast majority of municipalities in District 13E were placed in District 38. The Borough of Oradell was also placed in District 38.

4. Sometime in March 1973, the Plaintiff announced that he would stand as a candidate for re-election in District 38. He filed nominating petitions as a candidate in

that district and on June , 1973, was nominated as one of the two Democratic candidates in that district.

5. Sometime in March, Plaintiff went into the Borough of Oradell to conduct door to door campaigning. After ringing several doorbells, Plaintiff was stopped by a member of the Oradell police force and asked to leave the Borough. At no time did Plaintiff threaten, harass, disturb, insult or endanger any member of the community.

6. On April 3, 1973, the Defendant, Mayor and Council of the Borough of Oradell, passed on second reading Ordinance No. 598 as an amendment to Ordinance No. 573. (Said ordinances are attached as Exhibit A.) Said ordinance in pertinent part required "Any person desiring to canvas, solicit or call from house to house in the Borough . . . for a federal, state, county or municipal political campaign or cause shall be required to register with the Police Department for identification only."

7. Plaintiff is of limited financial means and does not have adequate campaign financing available. The principal means by which Plaintiff communicates with the voters is by door-to-door canvassing.

8. If Plaintiff was required to register with the Oradell Police Department every time he wished to door-to-door canvas in Oradell, a substantial part of Plaintiff's time would be spent either traveling to or from the police station or registering there.

9. Judicial notice may be taken of the fact that Oradell is a predominantly Republican community with a long history of one party rule and very few, if any, Democratic candidates have received a plurality in the Borough.

10. If the Plaintiff was forced to register with the Borough of Oradell every time he wished to canvas door to door in the Borough, he would suffer irreparable injury because he would not have sufficient time to meet with potential voters.

11. Plaintiff is unsure as to whether, if he wished to meet in the Borough of Oradell with one or two voters at the request of those voters, the conduct would come within the scope of the ordinance and he would be required to register. Therefore, the ordinance is void for vagueness and overbroad.

12. Since in canvassing door to door in the Borough of Oradell, Plaintiff has no other purpose than to inform the citizens of Oradell by speech and written word of his candidacy and of other matters of statewide importance, Ordinance No. 598 abridges Plaintiff's right of free expression and discourages protected political activity. Said ordinance is in violation of Plaintiff's constitutional rights under the First and Fourteenth Amendments to the Constitution of the United States.

13. Because Plaintiff must register prior to canvassing door to door, there is a chilling effect upon his exercising of his constitutional rights.

14. Ordinance No. 598 serves no legitimate public purpose and is an abuse of the police power.

WHEREFORE Plaintiff demands judgment:

1. Declaring Ordinance No. 598 to be unconstitutional, null and void for the reasons aforesaid.

2. Permanently enjoining the Defendant from enforcing said ordinance or taking any other action to prevent

Plaintiff from waging a political campaign in the Defendant Borough.

3. Costs of suit.

4. Any other relief which the Court deems to be just and equitable.

SECOND COUNT

1. Plaintiff Edward H. Hynes repeats and realleges the allegations of the First Count as if repeated verbatim herein.

2. Plaintiff Edward H. Hynes is an elected representative of the people of Bergen County and an official of the State of New Jersey.

3. Ordinance No. 598 prevents Plaintiff from communicating with his constituents and carrying out his duties as a member of the General Assembly.

WHEREFORE Plaintiff demands judgment:

1. Declaring Ordinance No. 598 to be unconstitutional, null and void for the reasons aforesaid.

2. Permanently enjoining the Defendant from enforcing said ordinance or taking any other action.

3. Costs of suit.

4. Any other relief which the Court deems to be just and equitable.

THIRD COUNT

1. Plaintiff Hugh Stier repeats and realleges the allegations of the First and Second Counts as if repeated verbatim herein.

2. Plaintiff Stier is a registered Democratic voter in the Borough of Oradell, active in the affairs of the local Democratic Party and a member of the Bergen County Democratic County Committee.

3. Ordinance No. 598 prevents Plaintiff Stier from communicating with other residents of the Borough and frustrates his efforts to convince these residents to support candidates of the Democratic Party.

4. As an active member of the Democratic Party, Plaintiff Stier has an interest in seeing that he and other members of the party cast an informed and educated vote in Democratic primary elections so as to assure that the Democratic Party nominates the most qualified candidates in the general election.

5. Ordinance No. 598 violates Plaintiff Stier's constitutional rights under the First and Fourteenth Amendments of the Constitution of the United States in that it violates his right to free speech and denies him equal protection of the laws.

6. Ordinance No. 598 violates Plaintiff Stier's constitutional rights under the Fifteenth Amendment to the Constitution of the United States as it deprives him of his right to cast an effective and informed vote in Democratic primary elections.

WHEREFORE Plaintiff Stier demands judgment:

1. Declaring Ordinance No. 598 to be unconstitutional, null and void for the reasons aforesaid.

2. Permanently enjoining the Defendant from enforcing said ordinance or taking any steps to deprive him of his rights under the First, Fourteenth and Fifteenth Amendments to the Constitution of the United States.

Appendix F

Verified Complaint

FOURTH COUNT

1. Plaintiff Anthony Barone repeats and realleges the allegations of the First, Second and Third Counts as if repeated verbatim herein.

2. Plaintiff Barone is a registered Republican voter in the Borough of Oradell who has cast a vote in a Republican primary election. He is interested in the political process and in casting an informed vote.

3. Plaintiff Barone is afraid that under the terms of Ordinance No. 598, political candidates and public officials will be afraid to campaign door to door in Oradell because of fear of registering, fear that their political activity will be in violation of local ordinance and unsureness as to whether their activity is prohibited. Ordinance No. 598 creates a chilling effect on political candidates and public officials since rather than confronting the provisions of Ordinance No. 598, political candidates and public officials will elect not to compaign in Oradell.

4. As a result of Ordinance No. 598 and the situation described aforesaid, Plaintiff Barone is effectively precluded from meeting and communicating with public officials and candidates for public office. He is therefore denied the right to cast an effective vote as guaranteed by the Fifteenth Amendment to the Constitution of the United States, denied his right to equal protection of the laws under the Fourteenth Amendment to the Constitution of the United States, and his right to free communication with public officials and candidates for elected office under the First Amendment to the Constitution of the United States.

Appendix F

Verified Complaint

WHEREFORE Plaintiff Anthony Barone demands judgment:

1. Declaring Ordinance No. 598 to be unconstitutional, null and void for the reasons aforesaid.

2. Permanently enjoining the Defendant from enforcing said ordinance and taking any further steps to prevent Plaintiff from communicating with candidates for public office or elected officials.

3. Costs of suit.

4. Any other relief which the Court deems to be just and equitable.

FIFTH COUNT

1. Plaintiff Maritza Kougasian repeats and realleges the allegations of the First, Second, Third and Fourth Counts as if repeated verbatim herein.

2. Plaintiff Maritza Kougasian is a registered Democratic voter in the Borough of Oradell but is not active in political affairs. She is interested in the political process and in communicating with candidates of both political parties since she is interested in voting for the best candidate regardless of party.

3. Plaintiff Kougasian is afraid that under the terms of Ordinance No. 598, political candidates and public officials will be afraid to campaign door to door in Oradell because of fear of registering, fear that their political activity will be in violation of local ordinance and unsureness as to whether their activity is prohibited. Ordinance No. 598 creates a chilling effect on political candidates and public officials since rather than confronting the pro-

visions of Ordinance No. 598, political candidates and public officials will elect not to campaign in Oradell.

4. As a result of Ordinance No. 598 and the situation described aforesaid, Plaintiff Kougasian is effectively precluded from meeting and communicating with public officials and candidates for public office. She is therefore denied the right to cast an effective vote as guaranteed by the Fifteenth Amendment to the Constitution of the United States, denied her right to equal protection of the laws under the Fourteenth Amendment to the Constitution of the United States and her right to free communication with public officials and candidates for elected office under the First Amendment to the Constitution of the United States.

Wherefore Plaintiff Maritza Kougasian demands judgment:

1. Declaring Ordinance No. 598 to be unconstitutional, null and void for the reasons aforesaid.

2. Permanently enjoining the Defendant from enforcing said ordinance and taking any further steps to prevent Plaintiff from communicating with candidates for public office or elected officials.

3. Costs of Suit.

4. Any other relief which the Court deems to be just and equitable.

Sixth Count

1. Plaintiff, Susan DePrima, repeats and realleges the allegations of the First, Second, Third, Four and Fifth Counts as if repeated verbatim herein.

2. Plaintiff, Susan DePrima, is a registered voter in the Borough of Oradell. She is affiliated with no political party and is not active in political affairs. She is an independent voter. She is interested in the political process and in communicating with candidates of both political parties in order to discuss the issues in the campaign and cast an informed and educated vote.

3. Plaintiff, Susan DePrima, is afraid that under the terms of Ordinance No. 598, political candidates and public officials will be afraid to campaign door to door in Oradell because of fear of registering, fear that their political activity will be in violation of local ordinance and unsureness as to whether their activity is prohibited. Ordinance No. 598 creates a chilling effect on political candidates and public officials since rather than confronting the provisions of Ordinance No. 598, political candidates and public officials will elect not to campaign in Oradell.

4. As a result of Ordinance No. 598 and the situation described aforesaid, Plaintiff Susan DePrima, is effectively precluded from meeting and communicating with public officials and candidates for public office. She is therefore denied the right to cast an effective vote as guaranteed by the Fifteenth Amendment to the Constitution of the United States, denied her right to equal protection of the laws under the Fourteenth Amendment to the Constitution of the United States, and her right to free communication with public officials and candidates for elected office under the First Amendment to the Constitution of the United States.

Wherefore Plaintiff, Susan DePrima, demands judgment:

1. Declaring Ordinance No. 598 to be unconstitutional, null and void for the reasons aforesaid.

2. Permanently enjoining the Defendant from enforcing said ordinance and taking any further steps to prevent Plaintiff from communicating with candidates for public office or elected officials.

3. Costs of suit.

4. Any other relief which the Court deems to be just and equitable.

NED J. PARSEKIAN, ESQ.
Attorney for Plaintiff
By /s/ MELVIN R. SOLOMON

CERTIFICATION

We hereby certify that the allegations of the complaint are true to the best of our knowledge and belief. The party certifying to each count has knowledge as to the count which refers to him.

The complaint is made in truth and in good faith and without collusion for the causes set forth herein.

EDWARD H. HYNES
HUGH STIER
ANTHONY BARONE
MARITZA KOUGASIAN
SUSAN DEPRIMA

Affidavit of Edward H. Hynes

(Filed—October 15, 1973.)

STATE OF NEW JERSEY,
COUNTY OF BERGEN, *ss.*:

EDWARD H. HYNES, being of full age, upon his oath according to law, deposes and says:

1. I am a member of the General Assembly of the State of New Jersey, having been elected to that position on November 9, 1971. I represent District 13E or what is now District 38 in central Bergen County, New Jersey. The Borough of Oradell is one of the towns which I represent.

2. I am a candidate for re-election in District 38.

3. I am of limited financial resources and my campaign funds are limited. Therefore, the main basis of my campaigning is door-to-door canvassing.

4. As the attached Complaint states, sometime in March 1973, I began to campaign door to door in the Borough of Oradell. After ringing several doorbells, I was stopped by members of the Oradell Police Force and asked to leave the Borough.

5. Subsequently the Borough enacted an ordinance which requires any political candidate who wishes to campaign door to door to register with the Police Department.

Appendix F

6. This ordinance works a great hardship on me and if I had to comply with this ordinance, I would suffer irreparable injury.

7. I confine my door-to-door canvassing from 4 P.M. to 8 P.M. in the evening so as not to disturb people at late hours and therefore, if I were forced to go to the Oradell Police Department to register every time I was to canvass in Oradell, I would spend considerable time at the police station. On several occasions I canvassed door to door for only a half hour to an hour each evening when there are gaps in my schedule. If I were forced to go to the police station on these occasions, I would have no time left for door-to-door canvassing.

8. I adopt by reference all the other statements in the First Count of the Complaint and state to the best of my knowledge they are true.

9. I respectfully request the Court to enjoin the Borough from enforcing this ordinance as its enforcement violates my constitutional rights and causes me irreparable injury.

/s/ Edward H. Hynes

(Sworn to October 11, 1973.)

APPENDIX G

Answer

(Filed—October 17, 1973.)

The defendants, The Mayor and Council of the Borough of Oradell, and The Borough of Oradell, a municipal corporation of the State of New Jersey, located in the Borough of Oradell, Bergen County, answering the complaint filed herein, say:

First Count as to Plaintiff, Edward H. Hynes:

1. The allegations of paragraphs 1, 2, 3 and 4 are admitted.

2. These defendants lack sufficient information so as to form a belief as to the allegations of paragraph 5 and leave the plaintiff to his proof.

3. The allegations of paragraph 6 are admitted.

4. Defendants lack sufficient information so as to form a belief as to the allegations of paragraphs 7, 8 and 9 and leave the plaintiff to his proof.

5. The allegations of paragraphs 10, 11, 12, 13 and 14 are denied.

Second Count as to Plaintiff, Edward H. Hynes:

1. Defendants repeat the answers to allegations of the First Count incorporated in paragraph 1 of the Second Count as if set forth at length.

2. The allegations of paragraph 2 are admitted.

3. The allegations of paragraph 3 are denied.

THIRD COUNT AS TO PLAINTIFF, HUGH STIER:

1. These defendants make the same answers to the allegations of the First and Second Counts as if set forth herein at length.

2. These defendants lack sufficient information so as to form a belief as to the allegations of paragraph 2 and leave the plaintiff to his proof.

3. The allegations of paragraph 3 are denied.

4. The allegations of paragraph 4 constitute a conclusion and these defendants make no answer thereto.

5. The allegations of paragraphs 5 and 6 are denied.

FOURTH COUNT AS TO PLAINTIFF, ANTHONY BARONE:

1. These defendants repeat the same answers to the allegations of the First, Second and Third Counts as if set forth herein at length.

2. Defendants lack sufficient information so as to form a belief as to the allegations of paragraph 2 and leave the plaintiff to his proof.

3. The allegations of paragraphs 3 and 4 are denied.

FIFTH COUNT AS TO PLAINTIFF, MARITZA KOUGASIAN:

1. These defendants make the same answers to the allegations of the First, Second, Third and Fourth Counts as if set forth herein at length.

2. Defendants lack sufficient information so as to form a belief as to the allegations of paragraph 2 and leave the plaintiff to her proof.

3. The allegations of paragraphs 3 and 4 are denied.

SIXTH COUNT AS TO PLAINTIFF, SUSAN DEPRIMA:

1. Defendants repeat the same answers to the allegations of the First, Second, Third, Fourth and Fifth Counts as if set forth herein at length.

2. Defendants lack sufficient information so as to form a belief as to the allegations of paragraph 2 and leave the plaintiff to her proof.

3. The allegations of paragraphs 3 and 4 are denied.

FIRST SEPARATE DEFENSE

The provisions of Ordinance No. 598 do not require that a political candidate register each and every time that he enters the municipality but only that he register once for identification only.

SECOND SEPARATE DEFENSE

Ordinance No. 598 is constitutional and does not interfere in any way with the canvassing of the defendant municipality by bona fide political candidates.

MAJOR & MAJOR
Attorneys of the Defendants
By /s/ JAMES A. MAJOR II

We certify that the within pleading was served within the time specified by Rule 4:6.

MAJOR & MAJOR
Attorneys of the Defendants
By /s/ JAMES A. MAJOR II

Affidavit of George Brugnoli

(Filed—October 25, 1973.)

STATE OF NEW JERSEY }
COUNTY OF BERGEN } ss.:

GEORGE BRUGNOLI, of full age, being duly sworn on his oath according to law, deposes and says:

1. I am and have been for some period of time the Chief of Police of the defendant Borough of Oradell. I am making this affidavit in connection with the present suit by Assemblyman Hynes and other plaintiffs in which they seek to have the court declare invalid an ordinance which requires political candidates to identify themselves with the Police Department before convassing the Borough.

2. Over the last several years the Police Department of the Borough of Oradell has conducted a survey as to the various crimes which are committed within the municipality during the course of a year. Over the past 4 years the breakings and enterings within the Borough of Oradell were as follows: 1969—40; 1970—41; 1971—28; 1972—65. As of May, 1973, there were 25 breakings and enterings within the Borough.

3. As to the year 1972 the location of these 65 entries are set forth on the map of the Municipality which is annexed to this affidavit as Exhibit A.

4. As indicated by these statistics this particular crime has been and is a problem in the area of law enforcement. The Borough of Oradell publishes regularly what is called a Newsletter. At various times we have advised people within the municipality to contact the Police Department in the event they see anything suspicious in the neighborhood. The residents have been described in these

Newsletters as the eyes and ears of the Police Department. This is one of the reasons why the identification of all political candidates is important. It at least alerts the officers that the candidate will be within the municipality and gives us an opportunity to identify him. There is no fee charged any political candidate; there is no permit that a political candidate must obtain; there is no necessity that he be fingerprinted or photographed. All that is asked is that he let us know who he is. Additionally, although the ordinance does not require this, it is helpful if the candidates would indicate to us the approximate times and dates that he will be within the municipality.

5. There is no requirement exacted by the municipality or the Oradell Police Department that a candidate engaged actively in a political campaign register with the Police for identification purposes each and every time he wishes to come into Oradell to canvass.

6. Finally, the identification requirement is important in view of the number of state, local and county candidates in an election year. It is impossible for the Police Department to know all of these candidates by sight.

7. I have already given the figures on breakings and enterings in the Borough of Oradell. I would also add that our annual police report for 1972 showed 145 larcenies. In view of the statistics that I have given, knowing who is in the municipality and for what purpose is an important part of law enforcement.

/s/ GEORGE BRUGNOLI

(Sworn to October 16, 1973.)

Exhibit "A" (Map of the Municipality Showing Break and Entries for 1972)

[PHOTOSTAT]
(Omitted)

SUPREME COURT, U. S.
FILED
MAY 7 1975
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-1329

EDWARD H. HYNES, *et al.*,

Appellants,

v.

THE MAYOR AND COUNCIL OF THE BOROUGH OF ORADELL, *et al.*,

Appellees.

On Appeal from the Supreme Court of New Jersey

MOTION TO DISMISS AND AFFIRM PURSUANT TO RULE 16

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Pursuant to Rule 16 (b) we move to dismiss the Jurisdictional Statement or to affirm on the ground that it does not present a substantial federal question. Alternatively, we refer to subsection (d).

Pursuant to Rule 40-3 there is no inaccuracy or omission in the statement supplied by the appellants and we are not dissatisfied with items (a) (b) (c) (d). We proceed at once to the merits.

POINT ONE

No substantial federal question is involved.

Appellants attack Ordinance #598 of the appellee (App. E-5). They assert the ordinance violates the free speech guaranteed by the First Amendment. We start first with what the ordinance does not preclude. So far as this ordinance is concerned the appellants, in a public place, can speak until they exhaust their breath and ideas, or the ears of the hearers rebel against the discordant din. They may stand on street corners and distribute literature. They may discuss with passing citizens and voters the merits of their respective candidates and/or cause and they may solicit signatures to their petitions. There is no censorship exercised over the views they espouse. Appellants want more. They want to move, unidentified, from house to house in this suburban community and harangue the householders. Some residents may embrace both the appellants and their cause, while others may feel they are sowing the seeds of a dangerous heresy. But whether welcome or not, appellants say they have this right and they bottom it on the theory of free speech. They put it more delicately on page 11 of their brief by saying they have the right to communicate face to face. It might be sufficient answer to say no one says to the contrary and certainly this ordinance does not prohibit it. All it does is say that people circumstanced as the appellants should identify themselves. There is nothing about the appearance of a candidate for public office, cartoonists aside, that distinguishes him from the rest of the populace. He does not wear the uniform of a postal carrier, a Western Union messenger, police officer, laundry man, or the like. Immediately the question arises: Why should not he make known his pres-

ence to the police authorities? Every day the news and electronic media convey items indicating the rape, murder and robbery of citizens in their own homes. We doubt if the perpetrators identified themselves as criminals before gaining admittance to the homes of the unfortunate.

Appellants cite no case, and we know of none, which asserts that the right of free speech justifies what otherwise would be a trespass.

> "If a man crosses his neighbor's boundary by however innocent a mistake, or if his cattle escape into his neighbor's field, he is said to be liable in trespass *quare clausum fregit.*" *Holmes' The Common Law,* p. 83.

In *Chase's Blackstone, Fourth Edition,* page 735, it is said:

> "• • • For every man's land is in the eye of the law enclosed and set apart from his neighbor's: and that either by a visible and material fence, as one field is divided from another by a hedge; or by an ideal invisible boundary, existing only in the contemplation of law, as when one man's land adjoins to another's in the same field."

The State of New Jersey, *State* v. *Shack,* 58 N. J. 297 (1971) has extended the right of entry to representatives of agencies and organizations which assist migrant farm workers. This was on the analogy that these workers occupied the status of tenants. But even in that case the court said that the employer could regulate or bar solicitors or peddlers of all kinds so long as the regulation did not deprive the migrant worker of practical access to things he needed. The court concluded as follows at page 308:

> "And we are mindful of the employer's interest in his own and in his employees' security. Hence he may reasonably require a visitor to identify himself, and also to state his general purpose if the migrant worker has not already informed him that the visitor is expected."

In that case the constitutionality of the New Jersey Trespass Statute was questioned on the ground that the right of free speech guaranteed by the First Amendment was violated. The court discussed *Marsh* v. *Alabama,* 326 U. S. 501, 66 S. Ct. 276, 90 L. Ed. 265 (1946); *Amalgamated Food Employees Union, Local 590* v. *Logan Valley Plaza, Inc.,* 391 U. S. 308, 88 S. Ct. 1601, 20 Law. Ed. 2d 603 (1966) and also *Schwartz-Torrance Investment Corp.* v. *Bakery and Confectionery Workers' Union,* 61 Cal. 2d 766, 40 Cal. Rptr. 233, 394 P. 2d 921 (Sup. Ct. 1964), *cert.* denied, 380 U. S. 906, 85 S. Ct. 888, 13 L. Ed. 2d 794 (1964).

The court said that these cases rested upon the fact that the property was in fact opened to the general public and hence the plaintiffs in those cases could not be barred from lawful activity on those premises. That these holdings were limited to citizens where the property was devoted to a public purpose is amply demonstrated by the decision of this court in *Lloyd Corp., Ltd.* v. *Tanner,* 407 U. S. 551 (1972) and *Central Hardware Co.* v. *N.L.R.B.,* 407 U. S. 539 (1972).

In *Goldberg* v. *Housing Auth. of Newark,* 38 N. J. 578 (1962) the State Supreme Court divided 4 to 3 on the question of whether the owner of a multi-family structure had a duty to provide police protection. In that case the plaintiff, while delivering milk to a tenant at defendant's housing project, was beaten and robbed by two

men. The attack occurred at about 1:30 P.M. in a self-service passenger elevator. Whether the assailants were tenants, guests of tenants, or intruders, is not known. The project had between 5300 and 6000 residents, embraced 19.15 acres of land and had 10 apartment houses, each 12 stories high. The majority ruled that the owner of multi-family structures had no duty to provide police protection. The police protection would have to be a private force. If we understand the appellants' argument, they would have the right to go through this project carrying their message and soliciting signatures, and if stopped by a private policeman simply state their mission and pass on. Appellants, say they, would be secure in the rights granted by the First Amendment. How, then, could a private police force protect the tenants and their invitees? Surely the two men who beat and robbed the plaintiff in *Goldberg, supra,* did not identify themselves as robbers. What benefit would a private police force be in a multi-family housing project if intruders, by the simple expedient of saying they were soliciting votes, could pass without identification? It is a well-known fact that apartment house owners advertise the presence of 24-hour doormen. It is also a well-known fact that tenants complain bitterly of the lack of security, as demonstrated by *Goldberg, supra.*

It is a well-known fact that freedom of speech is not an absolute right but subject to reasonable regulation. We need but cite *Cantell* v. *Connecticut,* 310 U. S. 296, 84 Law. Ed. 1213, 60 Supreme Ct. 900; *Breard* v. *Alexandria,* 341 U. S. 622 (1951); *Martin* v. *City of Struthers,* 319 U. S. 141; *Konigsberg* v. *State Bar of California,* 366 U. S. 36 (1961). These cases are, of course, in addition to *Marsh, Logan Valley, Lloyd Corp.* and *Central Hardware, supra.* The question, then, in each case is whether the regulation is reasonable or whether it is so

restrictive as to amount to an emasculation of the right of free speech.

The challenged ordinance is reasonable. The canvassers must identify themselves in the interest of the security of the householders. Once this is done there may be face-to-face dialogue between the canvassers and those interested in hearing their message. No embarrassing questions are asked of the canvassers; they are not required to be fingerprinted or photographed, nor is there any inquiry into their past history or membership in alleged subversive groups. As in all these cases competing principles strive for the mastery. With the right of privacy of the householder and his right to security, and his reasonable expectation that the police will provide that security, placed on one side of the scale, and the nebulous right of door-to-door canvassing on the other, we think the scale is weighed on the side of the householder.

The statute invoked by the appellants is permissive in nature. In *Eaton* v. *Price,* 360 U. S. 246, 79 Supreme Ct. 978, 3 Law Ed. 2d 1200 (1959) Justice Brennan stated that the court, in determining applications for leave to appeal from the state court, is governed by the same rules which it applies to applications for certiorari. There must be a reasonable showing of the substantial federal question, otherwise the court would be swamped with appeals. That we are not manufacturing dragons, we call attention to 5 *Bender's Federal Practice* at page 169 where the author says 50% of the applications are denied without argument.

For the reasons set forth above, this motion should be granted and the judgment of the Supreme Court of New Jersey should be affirmed.

Respectfully submitted,

Everett I. Smith,
Counsel for Appellees.

Supreme Court, U. S.
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BRIEF FOR THE APPELLANTS

Opinions Below

The opinion of the Supreme Court of New Jersey (App. A1-A18) is reported at 66 N.J. 376, 331 A.2d 277 (1975). The opinions of the Appellate Division of the Superior Court of New Jersey (App. B1-B3) and the Chancery Division of the Superior Court, Bergen County (App. C1-C3), are not reported.

Jurisdiction

This action was commenced in the Superior Court of the State of New Jersey, Bergen County, against the Borough of Oradell, New Jersey, for a judgment declaring uncon-

stitutional under the First, Fourteenth and Fifteenth Amendments to the Constitution of the United States, an ordinance enacted by the Borough, and enjoining enforcement of that ordinance. Upon motion for a preliminary injunction, a hearing was held and the Superior Court (trial court) ruled that the ordinance was void because violative of the First Amendment, as well as because it was incomplete under requirements of New Jersey law, and entered judgment in favor of the plaintiffs (App. C4). The Appellate Division of the Superior Court affirmed the judgment of the trial court. On appeal to the Supreme Court of New Jersey, the ordinance was held valid under the First Amendment and all other provisions of the United States Constitution. The judgments below were reversed, with the instruction that judgment for the defendants be entered. Two members of the Court dissented.

The judgment of the Supreme Court of New Jersey was entered on January 24, 1975, and Notice of Appeal was filed in that Court on April 16, 1975 (App. D1). The jurisdiction of the United States Supreme Court to review this decision on appeal is conferred by Title 28 United States Code, Section 1257(2). The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on appeal in this case: *King Mfg. Co.* v. *Augusta,* 277 U.S. 100; *Jamison* v. *Texas,* 318 U.S. 413; *Independent Warehouses, Inc.* v. *Scheele,* 331 U.S. 70; *Poulos* v. *New Hampshire,* 345 U.S. 395; *Coates* v. *Cincinnati,* 402 U.S. 611.

On June 9, 1975 this Court noted probable jurisdiction.

Statute Involved

The basic statute involved is Oradell Ordinance No. 573 (App. E1-E4) as amended on April 3, 1973 by Ordinance No. 598 (App. E-5). The subsequent amendment on which the decision of the Supreme Court of New Jersey is based is Oradell Ordinance No. 598-A, which provides as follows:

> An Ordinance to Amend and Supplement an Ordinance Entitled "An Ordinance to Regulate and Prohibit Canvassing and Soliciting in the Borough of Oradell and Establish Fees and Provide Penalties for the Violation Thereof."
>
> WHEREAS, The Borough of Oradell is primarily a one family residential town whose citizens are employed elsewhere, resulting in the wives of the wage earner being left alone during the day; and
>
> WHEREAS, because of the geographical location of most of the homes it is impossible to police all areas at the same time, resulting in a number of break and entries and larceny in the home; and
>
> WHEREAS, it is in the public interest and the public safety that persons not be permitted to call from house to house on the pretext of soliciting votes for a designated candidate or signatures for a nominating petition, or to solicit for a recognized charitable cause or borough activity, without such persons being first identified by the Police Department; and
>
> WHEREAS, the Mayor and Borough Council of The Borough of Oradell feel that it is in the public interest and for the protection of The Borough of Oradell that such persons be required to notify the Police Department for the purpose of identification.

NOW, THEREFORE, BE IT ORDAINED by the Borough Council of The Borough of Oradell, in the County of Bergen and State of New Jersey, that an ordinance entitled "An ordinance to regulate and prohibit canvassing and soliciting in The Borough of Oradell and establish fees and provide penalties for the violation thereof" be amended and supplemented as follows:

(1) That Section 1 be amended and supplemented by the addition of Section 1 (a) to be entitled "Exceptions to Permit" as hereinafter set forth:

Section 1 (a): Exceptions to Permit

Any person desiring to canvass, solicit or call from house to house in the Borough for a recognized charitable cause, or any person desiring to canvass, solicit or call from house to house for a Federal, State, County or Municipal political campaign or cause, shall be required to notify the Police Department, in writing, for identification only. Said notification shall be good for the duration of the campaign or cause. The provisions of this section shall also apply to representatives of Borough Civic Groups and Organizations and any veterans honorably discharged or released under honorable circumstances from active service in any branch of the Armed Forces of the United States. All other Sections of Ordinance No. 573, with the exception of the penalty clause designated as Section 7, shall not be applicable to such persons or groups as designated herein.

(2) All ordinances or parts of ordinances inconsistent with this ordinance are hereby repealed.

(3) This ordinance shall take effect after final passage and publication as required by law.

This is to Certify that the foregoing ordinance was finally passed and adopted at the regular meeting of the Council of The Borough of Oradell, N.J. on July 16, 1974, and that the same was approved by the Mayor on July 16th, 1974.

STANLEY J. KUFEL
Borough Clerk

The Sunday Post (R-5028)
Fee: $30.00
July 21, 1974

Questions Presented

Ordinance No. 598-A of The Borough of Oradell set forth above, requires that "any person desiring to canvass, solicit or call from house to house for a Federal, State, County or Municipal political campaign or cause, shall be required to notify the Police Department, in writing, for identification only." Criminal penalties are provided for violation of this ordinance. The Supreme Court of New Jersey has sustained the validity of the ordinance (App. A7) under the First Amendment and as against "any of the other rights of plaintiffs herein." The plaintiffs include a member of The General Assembly of the State of New Jersey representing the Borough of Oradell, and four registered voters in and residents of Oradell.[1]

---

[1] Plaintiff Suzan DePrima no longer resides, nor is eligible to vote, in Oradell, New Jersey.

The questions presented are:

(1) Whether the Ordinance, on its face or as applied to the plaintiffs herein, is invalid under the First Amendment to the Constitution as made applicable to the States by the Fourteenth Amendment.

(2) Whether the Ordinance, on its face or as applied to the plaintiffs herein, is invalid under the due process or privileges and immunities clauses of the Fourteenth Amendment.

Statement of the Case

Appellant Edward H. Hynes was first elected to the General Assembly of New Jersey in November 1971 as the representative of Assembly District 13-E. Due to reapportionment, the lines of Assemblyman Hynes' district were redrawn in 1973 to include the Borough of Oradell, and the district was renumbered 38.

In March of 1973 Assemblyman Hynes, running for the Democratic nomination and working with limited financial resources (App. F2), went to the Borough of Oradell to campaign house-to-house for re-election. On that occasion, he was stopped by a member of the Oradell police force and ordered to leave the Borough. On April 3, 1973, the Borough of Oradell adopted Ordinance No. 598 (App. E5) as an amendment to its Canvassing and Soliciting Ordinance No. 573 (App. E4), adopted May 3, 1971. By the terms of the amended ordinance, candidates for public office and participants in political and other causes were required to register with the Oradell Police Department before they could conduct house-to-house canvassing, soliciting or calling.

Appellants commenced this action in the Superior Court of Bergen County on October 15, 1973, to have Ordinance No. 598 declared unconstitutional because violative of rights guaranteed to them by the First, Fourteenth and Fifteenth Amendments to the Constitution, and for permanent injunctive relief from enforcement of the Ordinance (Verified Complaint, App. F). Appellant Hynes alleged that the purpose of his house-to-house canvassing was to inform Oradell voters of his candidacy and other issues of public importance, and that the Ordinance abridged his First Amendment right freely to communicate this information (App. F1-4). Appellants Stier, Barone, Kougasian and DePrima alleged that their First Amendment rights to receive such communications from candidates for political office, and to exchange views with such candidates and other residents of the Borough regarding matters of public importance, were unconstitutionally abridged by the Ordinance (App. F4-9). In their Answer, the defendants denied that the Ordinance was unconstitutional and in an affidavit filed October 25, 1973, George Brugnoli, Chief of Police of the Borough of Oradell contended (App. G4-5) that the Ordinance was necessary to prevent crime, and that: " . . . knowing who is in the municipality and for what purpose is an important part of law enforcement."

Following a hearing on the motion for a preliminary injunction, the Superior Court on October 18, 1974, held *inter alia* that the Ordinance was invalid for lack of a penalty clause, unconstitutionally vague and overbroad, and violative of the First Amendment (App. C).[2] Its judgment was affirmed by the Superior Court, Appellate Division on April

[2] The transcript of the trial judge's oral decision appears to be technically flawed.

15, 1973, on the ground that Ordinance No. 598 was invalid for lack of a penalty provision. The Appellate Division found it unnecessary to pass on "the important issues" of constitutionality.

The Borough of Oradell appealed to the Supreme Court of New Jersey and, while this appeal was pending, the Borough on July 16, 1974 again amended Ordinance No. 573 by enacting Ordinance No. 598-A to replace No. 598.[3]

The New Jersey Supreme Court held that Ordinance No. 598-A, as the version of the ordinance in question extant at the time of appellate review, was the version of the ordinance before it for purposes of determining the case (App. A-4). Thus reaching the federal constitutional questions, the Court, with two dissents, reversed the decision below and held that Ordinance No. 598-A "was not a constitutionally cognizable interference with a First Amendment right nor with any of the other rights of plaintiffs herein." Such governmental impingements upon speech and assembly as were effected by the ordinance were "reasonable," and the Court viewed reasonableness as the proper test of the Ordinance's constitutionality because the appellants sought to exercise their First Amendment rights "house-to-house" rather than "in public areas" (App. A5).

In the opinion, the New Jersey court relied in part (App. A4) on its opinion in a related case decided the same day, *Borough of Collingswood* v. *Donald Ringgold,* set forth in

[3] Ordinance No. 598-A provides a penalty for its violation. The reference in Ordinance No. 598-A to "the penalty clause designated as Section 7" is in error, as the penalty clause of Ordinance No. 573 is in fact Section 6 (App. E-4). However, the Supreme Court of New Jersey ruled that the defect in Ordinance No. 598 "was remedied by the adoption of another amendatory ordinance, 598-A, providing for a penalty on violation. . . ." (App. A-4).

the Appendix (A19-A45) and reported at 66 N.J. 350, 331 A.2d 262 (1975), now pending in this Court (October Term, No. 74-1335) on the jurisdictional statement.

Summary of Argument

The declared purpose of Oradell Ordinance No. 598-A is public safety, as putatively threatened by persons posing as candidates, or political or charitable canvassers. Its constitutionality must be determined in the context of that purpose.

I.

As applied to the appellants, the ordinance is invalid under the First Amendment guarantees embodied in the Fourteenth Amendment. The constitutional rights of appellant Hynes and the other appellants are in part overlapping and in part distinct.

A. Hynes' rights as a holder of and campaigner for State office representing Oradell, to communicate and associate with the residents, are protected by the First Amendment. These rights embrace the right to canvass from door-to-door, and extend to Hynes' political supporters. The political importance of door to door campaigning, and its high degree of First Amendment protection, have repeatedly been articulated by this Court. *American Party of Texas* v. *White,* 415 U.S. 767, 787; *Martin* v. *Struthers,* 319 U.S. 141, 145-46.

B. The appellants who are residents of Oradell have the right under the First Amendment to receive informa-

tion and ideas from Hynes and other political candidates campaigning in Oradell. *Procunier* v. *Martinez,* 416 U.S. 396, 408-09. This includes the right to discussion at the residential door. The Oradell residents also have the right, independent of their status as constituents, to impart ideas and information by calling from house to house among themselves. The ordinance would subject all these rights to the precondition of police registration.

C. (1) The ordinance infringes the above rights by subjecting their exercise to the inconvenience and expense of the registration requirement. Furthermore, many persons are reluctant to involve themselves with officialdom, and the requirement will chill the willingness and diminish the availability of "dedicated volunteers." (2) The ordinance's identification requirement will remove the shield of anonymity from canvassers for political campaigns and causes, and chill such activities by exponents of unpopular views. *Talley* v. *California,* 362 U.S. 60.

D. The asserted State interest is insufficient to justify the infringement of First Amendment rights which the ordinance will cause. (1) There is nothing in the record to show either a general municipal need for such restrictions on canvassing, or justifying circumstances peculiar to Oradell. There appear to be few if any comparable ordinances elsewhere. The annual rate of breaking and entering crimes in Oradell is not significantly different from that of other suburban communities of like population. Nor is there any showing that a single one of these crimes in Oradell has had anything to do with calling from house to house. (2) The standard to be applied in

assessing the validity of the ordinance is whether there is a "compelling state interest" necessitating its infringement of First Amendment rights. *Williams* v. *Rhodes,* 393 U.S. 23, 31, 42. The New Jersey court erred in applying a less rigorous test. (3) There is no reasonable relation between the requirements of the ordinance and prevention of breaking and entering. No rational basis has been shown for singling out political canvassing as a source of these crimes. Nor does the identification requirement appear to serve any useful purpose in this connection. (4) For all the foregoing reasons, the registrational requirement is invalid under the First Amendment. Previous registration cannot be made a precondition to exercising the right of free speech. *Thomas* v. *Collins,* 323 U.S. 516, 540. Nor is there sufficient State interest to warrant the requirement of making a police record of all proposed canvassing, identifying the canvassers. *Talley* v. *California,* 362 U.S. 60, 66-67.

II.

The ordinance is invalid on its face for overbreadth, under the First Amendment guarantees. The Oradell ordinance is not limited to candidates for office, nor to strangers to the community. It applies to residents of Oradell as well as non-residents, and to canvassers as well as candidates. Thus it infringes the First Amendment rights of all residents of Oradell, and all persons associated with political campaigns or causes who might have occasion to canvass in Oradell. Appellants have "standing to raise an overbreadth challenge" based on the ordinance's infringement of the rights of these many other persons. *Grayned* v. *City of Rockford,* 408 U.S. 104, 114-15. The

limitations on the "overbreadth doctrine" indicated in *Broadrick* v. *Oklahoma*, 413 U.S. 601, 613-16 are inapplicable here, since the invalid sweep of the ordinance is substantial, and affects a wide range of "expressive or communicative conduct." Whatever lesser restrictions on door-to-door canvassing might be sustained, the sweep of the registrational requirement results in a pervasive infringement of political and community First Amendment values, and the ordinance must be held invalid on its face.

III.

The ordinance is invalid on its face for vagueness, under the First Amendment guarantees and the due process clause. There is nothing in the language of the ordinance specifying the requisites of "identification." This failure leaves to the police an impermissible range of discretion to determine what constitutes a sufficient "notification" within the meaning of the ordinance. The New Jersey court has put no limiting construction on the ordinance, and so far as the record shows, no regulations or forms have been issued by the Oradell police. The ordinance does not state whether or not the registrant must disclose the campaign or cause with which he is affiliated, or the time and place of the canvassing which he proposes to do, and there are other important areas of uncertainty. Such a degree of imprecision is fatal to the ordinance both under the First Amendment, *Grayned* v. *City of Rockford, supra* at 109, and the due process clause of the Fourteenth Amendment. *Lanzetta* v. *New Jersey*, 306 U.S. 451.

IV.

The ordinance is invalid under the privileges and immunities clause of the Fourteenth Amendment. That clause protects "interests, growing out of the relation between the citizen and the national government, created by the Constitution and federal laws." *Madden* v. *Kentucky*, 309 U.S. 83. The right to meet and discuss candidates and political issues is of that description. See *Slaughter-House Cases*, 16 Wall. 36, 79; *Crandall* v. *Nevada*, 6 Wall. 35, 45; *Hague* v. *C.I.O.*, 307 U.S. 496, 512, 532. For the reasons given heretofore Ordinance No. 598-A infringes those privileges and immunities and is invalid under that clause.

Argument

The ordinance challenged in this case is significantly different, in language and purpose, from most of the legislation restricting house-to-house calling[4] which has come before the courts for constitutional review. By far the most common are the so-called "Green River" ordinances, which forbid house-to-house sales of merchandise, and are generally regarded by the courts as intended to protect householders from unwelcome intrusion into the privacy of their homes. Such an ordinance, as applied to a solicitor of subscriptions to national magazines, was upheld by this Court against challenge under the First Amendment. *Breard* v. *Alexandria*, 341 U.S. 622. All members of the Court who reached the First Amendment point[5] agreed that the free speech contention was unavailable to "merchants . . . selling pots" or "solicitors for gadgets or brushes," and their disagreement turned chiefly on the issue of whether or not solicitors of magazine subscriptions should be regarded as commercial vendors or "agents of the press." 341 U.S. at 641-42 and 649-50.

[4] On its face, the Oradell ordinance is susceptible to the interpretation that the words "from house to house" qualify only the verb "call," so that the preceding verbs "canvass, solicit" would cover activities in the streets and other public places. The New Jersey court did not note this question, but its opinion explicitly construes the ordinance (App. A3-A5) as limited to house-to-house activities or, as the court put it (App. A5) "door-to-door ventures of charitable solicitors, political campaigners, and advocates in behalf of political causes."

[5] The Alexandria ordinance was also attacked under the due process and commerce clauses. Chief Justice Vinson and Justice Douglas thought it invalid as a burden on interstate commerce, and Justices Black and Douglas thought it invalid, as applied to the defendant, under the First Amendment.

The only other purely door-to-door legislation to reach this Court was a municipal ordinance forbidding "any person distributing handbills, circulars or other advertisements to ring the doorbell, sound the door knocker, or otherwise summon the inmate or inmates of any residence to the door" to receive the advertisement. This was held invalid under the First Amendment. *Martin* v. *Struthers*, 319 U.S. 141.[6] The ordinance was intended both to protect the repose of night-shift workers, and to guard against burglars posing as canvassers (319 U.S. at 144); this second purpose is closely akin to the object of the Oradell ordinance as described in the preambular clauses.

The Alexandria and Struthers ordinances are prohibitory. Less pervasive than the "Green River" prohibitory type, but not uncommon, are others which are regulatory, and condition canvassing or distributing activities on the issuance of a permit by municipal authorities. E.g. *Lovell* v. *City of Griffin*, 303 U.S. 444; *Schneider* v. *Irvington*, 308 U.S. 147; *Cantwell* v. *Connecticut*, 310 U.S. 296. Where commercial or charitable solicitation is involved, the usually stated object of such legislation is the prevention of fraud; public safety may also be invoked as justification. Oradell Ordinance No. 573 and the ordinance involved in the coeval *Collingswood* case are both of this type.

In view of this multiplicity of techniques and purposes, there is obvious relevance in Lord Dunedin's remark (quoted by Justice Blackmun in *Lehman* v. *City of Shaker Heights*, 418 U.S. 298, 302) that ". . . before you could

[6] Justices Reed, Roberts, and Jackson dissented. Justice Frankfurter (319 U.S. at 152-54) appears to have concurred on the ground that the ordinance was "an invidious discrimination against distributors of what is politely called literature."

say whether a particular thing could be done in a certain place you would have to know the history of the particular place." *M'Ara* v. *Magistrates of Edinburgh,* [1913] Sess. Cas. 1059, 1073-74. The residential door has a considerable First Amendment "history," in the light of which Oradell Ordinance 598-A must be viewed. Its effect is to substitute *registration* for regulation in the categories—charitable and political canvassing—to which it applies.[7]

Since Ordinance No. 598-A offers no impediment to anyone ready and willing to comply with the police notification requirement, obviously its purpose is not to prevent intrusion upon privacy and repose, as was the objective in the *Breard* and *Martin* cases, *supra.* Nor does the requirement appear to be designed to prevent fraud, and no such purpose is apparent in any of the "Whereas" clauses.

Accordingly, the constitutional validity of Ordinance No. 598-A is to be determined in the context of the single purpose invoked in the preamble and the affidavit in support of the answer (App. G4-G5): to wit, public safety, as putatively threatened by persons posing as candidates, or political or charitable canvassers or solicitors.

It is our position that nothing in the record of this case justifies the infringement of federal constitutional rights which Ordinance No. 598-A entails, and that the Ordinance is invalid, both as applied to the appellants and on its face.

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[7] Apparently it also excepts honorably separated veterans and "Borough Civic Groups and Organizations" from the requirements of Ordinance No. 573, so that they may engage in commercial solicitation upon compliance with the registration provisions of No. 598-A. [8]

I.

As Applied to the Appellants, the Ordinance Is Invalid Under the First Amendment Guarantees Embodied in the Fourteenth Amendment.

The appellants' federal constitutional rights all flow from the same sources, but take different forms and Ordinance No. 598-A infringes the several rights differently. Appellant Hynes is not a resident of Oradell, but the residents are his constituents, and the ordinance infringes both his rights of group association, and of communication with his constituents. The other appellants are residents of Oradell, and the ordinance infringes their rights of group association, and of communication both with candidates and canvassers, and with each other. We will deal separately with the rights of Hynes and the other appellants, and then discuss the sufficiency of the state interest invoked to justify the infringement.

A. The First Amendment Rights of Appellant Hynes

"Whatever differences may exist about interpretations of the First Amendment, there is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs. This of course includes discussions of candidates, structures and forms of government, the manner in which government is operated or should be operated, and all such matters relating to political processes." *Mills* v. *Alabama,* 384 U.S. 214, 218-19. Recently, in *Kusper* v. *Pontikes,* 414 U.S. 51, the Court restated the key role which political association and discourse perform in the constitutional scheme (414 U.S. at 56-57):

> "There can no longer be any doubt that freedom to associate with others for the common advancement of political beliefs and ideas is a form of 'orderly group activity' protected by the First and Fourteenth Amendments. . . . The right to associate with the political party of one's choice is an integral part of this basic constitutional freedom. . . ."

There can, accordingly, be no question that the First Amendment protects the right of Hynes, as a holder of and campaigner for State office as legislative representative of Oradell, to come into the Borough and communicate with his constituents and associate with those joining him in common political purpose.

As both a practical and a legal matter, that general right must embrace the particular right of Hynes *and his supporters* to canvass and solicit from door to door in the interest of their political campaigns or causes. The value of door-to-door distribution of literature as a means of communication[8] was forcefully expressed by this Court in *Schneider* v. *Irvington, supra* at 164, and *Martin* v. *Struthers, supra* at 145-46. In the latter case, the special importance of door-to-door political canvassing was thus remarked:

> "Of course, as every person acquainted with political life knows, door to door campaigning is one of the most accepted techniques of seeking popular support, while the circulation of nominating papers would be greatly handicapped if they could not be taken to the

[8] Such activity does not constitute a trespass; " . . . the knocker on the front door is treated as an invitation or license to attempt an entry. . . . " *Breard* v. *Alexandria, supra* at 626.

> citizens in their homes. Door to door distribution of circulars is essential to the poorly financed causes of little people."

Last year this Court sustained, against challenge by minor political parties and independent candidates, Texas laws requiring them to file petitions supported by notarized signatures of qualified voters in order to obtain places on the ballot. *American Party of Texas* v. *White*, 415 U.S. 767. Such requirements are a standard feature of state election machinery,[9] but it is hard to see how they could be upheld as permissible burdens on rights secured by the First and Fourteenth Amendments if house-to-house solicitation were generally subject to restrictions such as Oradell seeks to impose.

It needs no further argument to establish that Hynes' rights as a candidate or office-holder must include the right to have his supporters canvass and solicit from door to door in his behalf. As Justice White, for the Court, wrote in the *American Party* case (415 U.S. at 787): "Hard work and sacrifice by dedicated volunteers are the lifeblood of any political organization." Especially for the candidate for local office in a small district or community, and the minor party candidate, for whom access to broadcasting stations and daily newspapers is difficult if not impossible, the pursuit of support from door to door is the *sine qua non* of success.

[9] The election laws of New Jersey contain comparable requirements, which of course are effective in Oradell. N.J. Stats. Ann. Title 19:13-3 *et seq.*, 19:23-5 *et seq.*, and 19:25-3 *et seq.*

B. The First Amendment Rights of the Other Appellants

The process of communication requires listeners and readers as well as speakers and writers, and the rights of all these are protected by the First Amendment. Over the past twenty years this Court has repeatedly declared that the First Amendment embraces the right to receive information and ideas as well as the right of expression. *Procunier* v. *Martinez*, 416 U.S. 396, 408-09; *Kleindienst* v. *Mandel*, 408 U.S. 753, 762-63; *Red Lion Broadcasting Co.* v. *FCC*, 395 U.S. 367, 390; *Stanley* v. *Georgia*, 394 U.S. 557, 564; *Lamont* v. *Postmaster General*, 381 U.S. 301; *Martin* v. *Struthers, supra* at 143.

Accordingly, the rights of the appellants who are residents of Oradell to hear what political candidates and their supporters have to say are constitutionally independent of the campaigners' rights. As Justice Powell put the matter in *Procunier* v. *Martinez, supra* at pp. 408-09: ". . . the addressee as well as the sender of direct personal correspondence derives from the First and Fourteenth Amendments a protection against unjustified governmental interference with . . . a particular means of communication in which the interests of both parties are inextricably meshed."

As to considerations of time and place, the rights of candidates and canvassers on the one hand and constituents on the other are similarly grounded. If door-to-door canvassing is essential to effective prosecution of the campaign or cause, the rights of the householder are infringed by unwarranted restrictions on the canvassing.

But the Oradell residents also have rights which are quite independent of their status as constituents of Hynes or any other candidates or office-holders. They may wish to impart as well as to receive information and ideas, and to call from

house to house among themselves. The Oradell ordinance applies equally to residents and non-residents, and its prohibitions apply not merely to candidates but to "any person." [10]

The rights of the Oradell residents are, if anything, even more fundamental than those of Hynes. Surely no part of the rights guaranteed by the First Amendment is deeper-seated than the right to communicate with one's neighbors and fellow-townsmen about national and local political questions. Under Ordinance No. 598-A, the appellant Oradell residents are forbidden to engage in this traditional and constitutionally protected activity on a door-to-door basis without complying with the police notification requirements.

C. Infringement of Appellants' First Amendment Rights

Oradell Ordinance No. 598-A neither prohibits door-to-door canvassing nor requires an authorizing permit or license, and the New Jersey court majority upheld it (App. A-7) on the basis that "no lesser form of intrusion on the right of free speech" was conceivable. We submit that this is a superficial and badly mistaken assessment of the effect of the ordinance.

The ordinance is far from precise, and in a later part of this brief we discuss its ambiguity in constitutional terms. For present purposes, we assume that the notification requirement may be satisfied by a writing, submitted to the police in person or by mail, giving the name and address of the would-be house-to-house caller.

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[10] Appellant Stier in his complaint (App. F5) alleges that Ordinance No. 58 prevents him "from communicating with other residents of the Borough and frustrates his efforts to convince these residents to support candidates of the Democratic Party."

In viewing the ordinance, the New Jersey court appears to have confused the (apparent) simplicity of the requirement with its effect. *If* it is lawful to require that every charitable or political door-to-door caller give the police an identifying notification in advance, perhaps Ordinance No. 598-A uses minimum means to that end. But the question is, of course, whether, on the record in this case, the consequences of the requirement are constitutionally justifiable. We submit that they are not, and that the ordinance, in at least two respects, deeply infringes upon and chills exercise of the appellants' constitutional rights as heretofore described.

1. *The burden of notification: inconvenience and reluctance.* Regardless of the specific content of the required notification, the process of giving it imposes a heavy burden of expense and inconvenience on the political canvasser. It must be remembered that most of them are unpaid volunteers, scrounging a few hours or even minutes from their working and family commitments. Their activities cannot be nicely scheduled as to time, place, or even identity. The baby has a bad cold and Mother Jane cannot canvass this afternoon; can Laura take her place? Perhaps, but only if she can cover a more conveniently located area. Under the most restricted reading of the ordinance, such shifts will require either a letter or, in case of a last-minute change, a visit to the police station to submit the written notification.

Especially in local elections, the candidate's own campaign trail takes unexpected twists and turns. Anyone of a hundred unexpected developments may dictate a change in his schedule and, if door-to-door canvassing is involved, a new notification to the police. With all respect to the New

Jersey court, the majority appears to have been blind to the vicissitudes and other painful realities of electioneering.

Apart from the inconvenience, it is common knowledge that many people are shy of officialdom in general, and the police in particular. It is hard enough at best to round up the "dedicated volunteers" of whom Justice White spoke in the *American Party* case. Needless to say, the task will be much harder under ordinances such as No. 598-A, especially if the volunteers are canvassing for a candidate known to favor the creation of a civilian review board for complaints against the police.

2. *Loss of anonymity.* Since the stated object of Ordinance No. 598-A is "identification," its necessary effect will be to make a police record of the identity of all charitable and political house-to-house callers in the Borough of Oradell. It is not the usual practice of political candidates to keep a low profile, and under most circumstances this aspect of the statute might not be burdensome to them. Here again, however, it is important to keep in mind that the ordinance is not for candidates only, and that even candidates might in some circumstances be wary of the consequences of police fore-knowledge of their appearance on the local scene.

In Oradell, as elsewhere, some candidates and causes are popular and others are not. This Court paid heed to the social values of anonymity in *Talley* v. *California,* 362 U.S. 60, pointing (362 U.S. at 65) to earlier cases in which public identification of "members of groups engaged in the dissemination of ideas" was also held violative of the First Amendment. *Bates* v. *Little Rock,* 361 U.S. 516; *National Assn. for Advancement of Colored People* v. *Alabama,* 357

U.S. 449; *cf. Lamont* v. *Postmaster General,* 381 U.S. 301, 307; see also *Strasser* v. *Doorley,* 432 F.2d 567, 569 (C.A. 1st 1970).

Anonymity, to be sure, is not an absolute right, and this Court has upheld disclosure requirements when it found a state interest sufficient to warrant them. *United States* v. *Harriss,* 347 U.S. 612. However, as Justice Pashman observed in his dissent (App. A13), the *Talley* case and other decisions of this Court have established that "the first amendment protects the right of individuals to engage in political activity without giving up the shield of relative anonymity."

The question, therefore, is the sufficiency of the State interest, as shown in the record, to justify the infringements on basic First Amendment values which are the consequence of Ordinance No. 598-A.

D. Insufficiency of the State Interest

As shown by the preambular clauses of Ordinance No. 598-A and the affidavit of Chief Brugnoli in support of the answer (App. G4-G5), the State interest invoked to justify the requirements of the ordinance is the safety of the residents of Oradell against local crime, especially "break and entries" committed or attempted by persons calling from house to house "on the pretext" of charitable or political canvassing.

There is no gainsaying the primal quality of protection of the householder against crime as a state interest. But it is not an interest peculiar to Oradell; it is pervasive, and the governmental measures reasonably necessary to promote public safety vary enormously according to time, place, and other circumstances.

1. *Insufficiency of the factual showing in the record.* In order to show a state interest supportive of the requirements in Ordinance No. 158-A, the appellees should be able to show that other municipalities, including some comparable in size and social composition to Oradell, have found that charitable or political door-to-door canvassing is a cause of crime and have sought to eliminate or mitigate it by comparable means. Failing such a showing, appellees should demonstrate that there are factors and circumstances peculiar to Oradell which justify the registration requirements. We submit that, on either basis, the record is barren of any facts or allegations that support the ordinance.

While there are several organizations and periodical publications concerned with municipal legislation,[11] appellants have not found any comprehensive survey which would establish the existence *vel non* of ordinances similar to the one here at issue. Review of these publications and inquiries to the organizations have not disclosed any such.[12] It is clear that ordinances prohibiting or regulating commercial canvassing are very widespread, and others covering the solicitation of religious or charitable contributions are not uncommon. No ordinances comparable to Oradell's have surfaced in the few state and lower court decisions since the *Breard* case.[13]

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[11] See *Martin* v. *Struthers,* 319 U.S. at 148, and the *Municipal Ordinance Review,* a monthly publication of the National Institute of Municipal Law Officers. Most states have "Municipal Leagues," and there is a National League of Cities and a National Municipal League.

[12] Appellants have not had time or resources to make a thorough survey, and do not represent to the Court that such ordinances do not exist.

[13] The Irvington, N. J. ordinance invalidated in the *Schneider* case covered *all* door-to-door canvassing and was prohibitory rather than, as here, registrational. As the Green River type of ordinance

If evidence of a general municipal need for legislation such as Ordinance No. 598-A is lacking, so is any showing of necessitous circumstances peculiar to Oradell. We are told in the first two "Whereas" clauses that Oradell is "primarily a one family residential town" of commuting husbands whose wives are "left alone during the day" and that because "it is impossible to police all areas at the same time" there have been "a number of break and entries and larceny in the home." Chief Brugnoli's affidavit (App. G4) gives the number of "breakings and enterings within the Borough" year by year from 1969 to May 1973, and (App. G5) the larcenies in 1972. The New Jersey court's opinion tells us (App. A6) that the population of Oradell was 8903 in 1970. On that basis it was held that the requirement of police registration for political canvassers was "reasonable."

With all respect to the New Jersey court, we submit that these facts are wholly inadequate to show any particular local situation, or any basis for the ordinance. There must be hundreds of comparable suburban residential communities in the United States,[14] and it is hard to conceive of a community where all areas can be policed at the same time.

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was upheld in the *Breard* case, most of the commercial cases since that time (1951) have involved interpretative rather than constitutional questions. Note, 77 A.L.R. 2d 1216 (1961). Possibly this Court's decisions in the *Martin* and *Schneider* cases have discouraged the enactment of ordinances outside the commercial field. An ordinance of Elizabeth, N. J., held invalid on its face under the First Amendment in *City of Elizabeth* v. *Sullivan*, 100 N.J. Super. 51, 241 A.2d 41 (1968), required a permit for all house-to-house calling except "for a bona fide political candidate running for public office." But *cf. Commonwealth* v. *Phillips*, 73 Pa. D. & C. 346 (1950); *People* v. *Walkenhorst*, 55 Misc. 2d 935, 287 N.Y.S.2d 760 (1968).

[14] The Federal Bureau of Investigation crime survey for 1973 covered 1526 suburban cities with population under 10,000. *Crime in the United States 1973* p. 106.

In 1973, the annual crime rate for "Burglary—breaking or entering" was 935.5 per 100,000 persons in suburban cities with population less than 10,000,[15] or 93.55 per 10,000—a rate considerably higher than that shown for Oradell in the Brugnoli affidavit. In 1972 and 1973 the annual rate for breaking and entering in other municipalities in Bergen County, comparable in population to Oradell, shows some with higher and others with lower rates, with Oradell close to the average. *Crime 1973 in New Jersey*, pp. 102-08. The figures are tabulated in Annex 1, *infra* p. 43.

What is even more to the point, there is no evidence in the record that a single one of the crimes tabulated in the Brugnoli affidavit was committed under "the pretext" of soliciting votes or charitable contributions, or had anything whatsoever to do with calling from house to house. All crime is regrettable, and the Borough Council of Oradell no less than the Congress of the United States should be allowed discretionary legislative elbow room to guard against it. But measures which involve infringement of constitutional rights must be justified by compelling need, and that the appellees have wholly failed to show.

2. *Standard to be Applied.* The New Jersey court, while acknowledging that the appellants' activities were "not diluted in any way by commercial overtones" (App. A5), nevertheless described it as "'conduct which amounts to more than the right of free discussion comprehends,' *Thomas* v. *Collins*, 323 U.S. 516, 540 . . . for the reason that it takes place not in public areas, traditionally the scene of uninhibited discussion, but rather is house-to-house in nature." Therefore, said the court majority, "the sole consideration" is that the ordinance be "reasonable." The

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[15] *Crime in the United States 1973, loc. cit.* note 14.

apparent purpose of this passage, especially read in conjunction with the cited passage from the contemporaneous *Collingswood* opinion (App. A34-A35), is to support the conclusion that the activities restricted by Ordinance No. 598-A deserve only a lesser degree of First Amendment protection than "pure" speech, and that the "compelling state interest" test, which Justice Pashman thought applicable (App. A15), need not be satisfied. We submit that Justice Pashman was right and the majority wrong.

It is doubtful that analysis of questions such as this case presents is much aided by distinctions sought to be drawn between "pure speech" and "impure speech" or "speech plus," despite occasional use of the expression "pure speech" in this Court's opinions. See, e.g., *Cox* v. *Louisiana,* 379 U.S. 536, 555. As the late Harry Kalven suggested, "all speech is necessarily 'speech plus.'" *1965 Supreme Court Review* 23. There can be no communication in a vacuum of circumstance; it is always somewhere, sometime.

Of course, as the New Jersey court wrote, "different societal concerns are implicated" by house-to-house as compared to public area speech. To mention only the obvious, speech in public areas must not unduly obstruct traffic or the general public's fair enjoyment of public facilities; speech at the front door must be at a suitably subdued decibel level, and subject to immediate termination if the householder withdraws the permission extended by the front path and the doorbell or knocker. It goes without saying that the permissible range of government restriction will vary according to the physical circumstances in which communication is conducted, but it by no means follows that restrictions on speech by door-to-door callers should be tested constitutionally by a less rigorous standard than speech at street corners or in parks.

The relevant factors are multiplied when the speaker endeavors to persuade the listener to enter into a contractual relation, or make a financial contribution. So, too, they are more complex when a negative commercial influence is exerted, as in the picketing of stores, or where the effort is to persuade or impress the public at large not by speech so much as by organized human mass, as in picketing, parades, rallies, and other demonstrations.[16]

But none of the foregoing considerations is applicable here, since all that is involved is canvassing for a political campaign or cause. If the phrase "pure speech" is to be used at all, surely this is the place for it. The kind of speech here in question, comprising as it does discussion of public issues and political electioneering, commands as high a place as any in the scale of First Amendment values, and can only be infringed upon a showing of compelling state interest. *Williams* v. *Rhodes,* 393 U.S. 23, 31, 42; *N.A.A.C.P.* v. *Button,* 371 U.S. 415, 438.

3. *Lack of reasonable relation between the restriction and the prevention of crime.* Bare assertions of governmental interest do not justify intrusions on paramount constitutional rights. As this Court stated in *Bates* v. *Little Rock, supra* at 525:

> . . . governmental action does not automatically become reasonably related to the achievement of a legitimate

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[16] It was actions accompanying speech such as these which were involved in the cases and dicta cited by the New Jersey court. In *Thomas* v. *Collins,* 323 U.S. at 540, the dictum related to "the collection of funds or securing subscriptions," as it did also in the dictum in *Poulos* v. *New Hampshire,* 345 U.S. 395, 405, referring to the *Breard* case. In *Cox* v. *Louisiana,* 379 U.S. 536, 555, Justice Goldberg was speaking of "conduct such as patrolling, marching, and picketing on streets and highways."

> and substantial governmental purpose by mere assertion in the preamble of an ordinance. When it is shown that state action threatens significantly to impinge upon constitutionally protected freedom it becomes the duty of this Court to determine whether the action bears a reasonable relationship to the achievement of the governmental purpose asserted as its justification.

Such a "reasonable relationship" is lacking here. As the legislative purpose is to prevent crime, especially breaking and entering, there should be some showing that canvassing house-to-house is a significant source of these offenses, but (as indicated above, pp. 25-27) there is no evidence of any such connection.

Even if there were such evidence concerning canvassing in general, that would provide no rational basis for singling out *political* canvassing. If prevention of crime were truly the purpose of the legislation, one would have expected a restriction covering *all* house-to-house callers, since any kind of canvassing would furnish the "pretext" referred to in the third preambular clause. There can be no rational explanation on an anti-crime basis for covering only political and charitable canvassing (and commercial solicitation, under the other provisions of Ordinance No. 73, App. E1), and allowing all other kinds to continue unrestricted.[17] This irrational singling out of political house-to-house callers cannot but suggest that the framers of the ordinance had other purposes than crime prevention in view, as indicated in a later portion (pp. 39-40) of this brief.

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[17] The poll-taking and rating service canvassing involved in the *Collingswood* case (App. A24), for example, is not covered by the Oradell ordinance. Nor are meter-readers or other inspectors or surveyors whose duties require calling house to house.

Indulging the impossible assumption that political and charitable canvassing can legitimately be selected, the registrational requirement itself is vulnerable. The reasoning apparently is that by requiring candidates for public office and their supporters, and supporters of other public causes, to register with its Police Department, the Borough of Oradell will somehow be better able to prevent crime by determining who is on its streets and at its front doors and for what purposes. But it is difficult to see how a written identification, perhaps sent to the police by mail (App. A5), can serve any useful police purpose.

Mere identification by name will not tell the police when or where the registering person will be calling house to house. There would be nothing to prevent those on criminal mischief bent from sending in their names as prospective canvassers or callers for a worthy cause, in which case the house-holder's telephonic check with the police would be more likely to lull than alert him. As Justice Hall, dissenting in the present case, concluded (App. A7-8), the requirement has no reasonable relation to the object sought to be attained, and consequently "exceeds the public need and substantially affects desirable conduct not sufficiently related to the claimed evil."

4. *Legal insufficiency of the registrational requirement.* The lack of any factual showing of necessity for the registrational requirements of Ordinance No. 598-A, together with the absence of a reasonable relation between the supposed disease and the proposed cure, would condemn the ordinance constitutionally even under the relaxed test of "reasonableness" wrongly applied by the New Jersey court. Under the properly applicable "compelling state interest" standard the margin of failure is, of course, even wider.

The New Jersey court in the *Collingswood* case relied (App. A37) on dicta from several cases in this Court referring favorably to the use of identification devices. All but one of those dicta, however, dealt either with commercial canvassing or solicitation of charitable contributions, and the passage from Justice Black's opinion in *Martin* v. *Struthers,* 319 U.S. at 148, merely states, without specification of means, that "identification devices" may be used to check the activities of "criminals posing as canvassers." [18]

Whatever Justice Black had in mind, his dictum must be read with awareness that it preceded this Court's decisions in *Thomas* v. *Collins, supra, Talley* v. *California, supra,* and other cases discussed earlier in this brief. In *Thomas* v. *Collins,* although the Texas statute considered there (323 U.S. at 519-20) called for more information than the Oradell ordinance, narrowly construed, appears to require, the Texas registration requirement was defended on the same ground as is now urged: that it was "merely a previous identification requirement" (323 U.S. at 538). But this Court, while recognizing that such requirements might be justifiable where solicitation of funds or subscriptions was concerned, held to the contrary where speech alone was involved, saying (323 U.S. at 540):

> If the exercise of the rights of free speech and free assembly cannot be made a crime, we do not think this can be accomplished by the device of requiring previous

[18] The cited statements in the *Schneider* (308 U.S. at 165), *NAACP* (357 U.S. at 464), and *Breard* (341 U.S. at 644-45) cases dealt with commercial canvassing, and the dictum in *Cantwell* v. *Connecticut,* 310 U.S. 296, 306 with solicitation of charitable contributions. The ordinance which prompted Justice Black's quoted comment covered the distribution of advertisements, and would not have been applicable to most political canvassing.

> registration as a condition for exercising them and making such a condition the foundation for restraining in advance their exercise and for imposing a penalty for violating such a restraining order. So long as no more is involved than exercise of the rights of free speech and free assembly, it is immune to such a restriction. If one who solicits support for the cause of labor may be required to register as a condition to the exercise of his right to make a public speech, so may he who seeks to rally support for any social, business, religious or political cause. We think a requirement that one must register before he undertakes to make a public speech to enlist support for a lawful movement is quite incompatible with the requirements of the First Amendment.

The Court's opinion in the *Talley* case contains (362 U.S. at 64-65) an exposition of the First Amendment values attaching to anonymity, which is equally relevant to the present case. In that case, all that was required was identification of the printer and distributor of handbills by a notice printed on the document,[19] while here identification is to

[19] It is said that 36 states have statutes prohibiting distribution of anonymous election literature. Gillmor and Baron, *Mass Communication Law* (1974) 161 n.2. There is a comparable requirement relating to federal elections in 18 U.S.C. 612. The constitutionality of such legislation has not yet been passed upon by this Court, and the state and lower court decisions are in conflict. Decisions upholding them include *United States* v. *Scott,* 195 F. Supp. 440 (D. N.Dak. 1961); *United States* v. *Insco,* 365 F. Supp. 1308 (M.D. Fla. 1973), aff'd on other grounds 496 F.2d 204 (C.A. 5th 1974). There are more to the opposite effect. *Printing Industries of the Gulf Coast* v. *Hill,* 382 F. Supp. 801 (S.D. Tex. 1974), vacated and remanded by this Court June 30, 1975; *Zwickler* v. *Koota,* 290 F. Supp. 244 (E.D.N.Y. 1968), rev'd on other grounds *sub nom. Golden* v. *Zwickler,* 394 U.S. 103; *People* v. *Mishkin,* 17 App. Div. 2d 243, 234 N.Y. Supp. 2d 342 (1962); *People* v. *Duryea,* 351 N.Y. Supp. 2d 978 (1974); *City of Bogalusa* v. *May,* 212 So.2d 408

be accomplished by the more drastic method of registration with the police. In political canvassing, the canvasser is unlikely to object to disclosing to the *house-holder* his identity or the source of whatever literature he is distributing, but may well feel quite otherwise about prior police registration. The Oradell ordinance, in this respect, is close kin to the federal statute unanimously condemned in *Lamont* v. *Postmaster General,* 381 U.S. 301, which required the addressee of foreign mail classified as "communist political propaganda" to notify the Post Office in writing that he wished to have it delivered.[20]

In view of the complete failure of evidence supporting any sufficient state interest in the registration required here, the words of Justice Harlan, concurring in the *Talley* case (362 U.S. at 66-67), are directly relevant:

> Here the State says that this ordinance is aimed at the prevention of "fraud, deceit, false advertising, negligent use of words, obscenity, and libel," in that it will aid in the detection of those responsible for spreading material of that character. But the ordinance is not so limited, and I think it will not do for the State simply to say that the circulation of all anonymous handbills must be suppressed in order to identify the distributors of those that may be of an obnoxious character. In the absence of a more substantial showing as to Los

(La. 1968); *Commonwealth* v. *Davis,* 17 Crim. L. Rep. 2261 (Mass. 1975).

These and other recent decisions involving disclosures of campaign contributions, where the governmental interest asserted is informing the electorate and preventing corruption of the political process, do not closely touch the issues of the present case, where no such values are invoked.

[20] See also *Bursey* v. *United States,* 466 F.2d 1059 (C.A. 9th 1972); *Wulp* v. *Corcoran,* 454 F.2d 826 (C.A. 1st 1972).

> Angeles' actual experience with the distribution of obnoxious handbills, such a generality is for me too remote to furnish a constitutionally acceptable justification to the deterrent effect on free speech which this all-embracing ordinance is likely to have.

For all the foregoing reasons, appellants submit that the Oradell ordinance must be held unconstitutional, as applied to them, under the First and Fourteenth Amendments.

II.

The Ordinance Is Invalid on Its Face for Overbreadth, Under the First Amendment Guarantees.

The New Jersey court concluded that the Oradell and Collingswood ordinances were intended "to protect against a sense of unease and dangers reasonably to be apprehended on account of strangers filtering through the community." But of course, as already remarked, the ordinance is not so limited, as it applies to "any person" without qualification or limitation. This comprehends not only "strangers" and other non-residents, but residents of the Borough as well, and it also covers not only candidates, but also canvassers and all other door-to-door callers for charitable or political causes. The ordinance covers *all* political campaigns and causes, "Federal, State, County or Municipal" as the case may be.

Apart from the infringement of appellants' rights, accordingly, the ordinance must be held invalid on its face for overbreadth. It deeply infringes the rights of *all* residents of Oradell, and *all* persons associated with political[21]

[21] Appellants are not, of course, directly concerned with the clause of the ordinance covering charitable contributions. Insofar

campaigns or causes in which canvassing door-to-door in Oradell might play a part.

It is clear that these appellants have "standing to raise an overbreadth challenge" to the Oradell ordinance based upon its infringement of the First Amendment rights of these many persons to whom the ordinance is applicable. *Grayned* v. *City of Rockford,* 408 U.S. 104, 114-15. The invalid scope of the statute is not confined to a few narrow types of action, as in *Broadrick* v. *Oklahoma,* 413 U.S. 601, 609-10. Here it is the broad sweep of the ordinance, and its chilling effect on a wide range of "expressive or communicative conduct" (413 U.S. at 613), which reveals its facial invalidity.[22]

The impact of the registration requirement on the entire political process is pervasive. Failing any showing of crime conditions peculiar to Oradell, the ordinance's effect must be scrutinized on the assumption that other municipalities may adopt like legislation. The inhibiting effect, on a state- or nation-wide basis, of municipal requirements that *all* political house-to-house canvassers register with the police needs no further emphasis.

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as the purpose of the ordinance is public safety, it would appear to suffer from the same defects whether applied to political or charitable canvassing. If a purpose to prevent fraud can be discovered, question would arise whether the identification requirement is reasonably related to that aim.

[22] There can be no question here, as there might be under a licensing statute, whether appellants should have registered or attempted to do so before challenging the statute. What is complained of here is not the danger of denial, for the police have no authority to deny, since they have none to issue, a license. What is complained of is the infringement of rights inherent in the registration process itself. To ground such a challenge, appellants can not be required to do the very thing to which they are objecting.

For the residents of Oradell, the impact is different but just as deep. Any Oradell resident who, becoming interested in some political "cause," wishes to call at all the houses in the block (or apartments in the building) to inform or persuade the neighbors, must first comply with the ordinance. So heavy a burden on community discussion could hardly be justified short of martial law conditions.[23]

Appellants do not contend that house-to-house calling is immune from legislative restriction. As suggested in the *Schneider* (308 U.S. at 165), *Cantwell* (310 U.S. at 306-07), and *Martin* (319 U.S. at 148, 151) cases, reasonable time limitations might be specified, and sanctions provided against disregard of house-holder notices forbidding entry to canvassers.[24] Other restrictions, perhaps temporary, might be justified to meet unusual local conditions.

"It has long been recognized that the First Amendment needs breathing space and that statutes attempting to restrict or burden the exercise of First Amendment rights must be narrowly drawn and represent a considered legislative judgment that a particular mode of expression has to give way to other compelling needs of society." *Broadrick* v. *Oklahoma, supra* at 611-12. The Oradell ordinance wholly fails to meet this criterion, and should be held void on its face as overly broad.[25]

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[23] Some ordinances contain exemptions for community residents. See, e.g., *People* v. *Walkenhorst* and *Commonwealth* v. *Phillips,* both *supra* note 13. Such provisions may, however, raise equal protection questions.

[24] The New Jersey court's conclusion (App. A7), that "no lesser form of intrusion on the right of free speech" than Ordinance No. 598-A is conceivable, is quite unwarranted.

[25] See Note, *Overbreadth Review and the Burger Court,* 49 N.Y.U. L. Rev. 532 (1974); Note, *The First Amendment Overbreadth Doctrine,* 83 Harv. L. Rev. 844 (1970).

III.

The Ordinance Is Invalid on Its Face for Vagueness, Under the First Amendment Guarantees and the Due Process Clause.

The New Jersey court rightly noted (App. A4-A5) that Ordinance No. 598-A requires no fee, provides for no card or license, and reposes no official power to grant or withhold permission to canvass. The court declared itself impressed with the clarity of the ordinance with respect to the conduct—"door to door activities of charitable solicitors, political campaigners and advocates in behalf of political causes"—covered by the law.

On this basis, the New Jersey court described "the only requirements of the Ordinance" as "one of simple identification" (App. A5). But the phrase is far from self-explanatory and the court did not probe its meaning. We suggest the language of the ordinance—"notify the Police Department, in writing, for identification only"—is fatally vague and remits an excessive range of discretion to the police. The constitutional infirmity arises both from the sensitivity of the First Amendment freedoms to imprecise restrictions, and from the requirements of the due process clause with respect to fair warning of the metes and bounds of the criminal law. *Grayned* v. *City of Rockford, supra* at 108-09; *Coates* v. *Cincinnati,* 402 U.S. 611.

Since the ordinance itself is silent with respect to the requisites of "notify" and "identification" (other than that the notification be "in writing"), it must be presumed that the Police Department is given discretion to determine what sort of "notification" is sufficient for "identification."

There are no standards to guide or govern this discretion except the direction that a single notification shall be sufficient "for the duration of the campaign or cause." That is plainly insufficient to satisfy constitutional standards in a First Amendment context. *Lovell* v. *City of Griffin,* 303 U.S. 444; *Saia* v. *New York,* 334 U.S. 558; *Kunz* v. *New York,* 340 U.S. 290. The ordinance gives the Police Chief an impermissible range of discretion "with the attendant dangers of arbitrary and discriminatory application," and by its imprecision "operates to inhibit the exercise" of First Amendment freedoms. *Grayned* v. *City of Rockford, supra* at 109; see also *Coates* v. *Cincinnati, supra.*

It is true that in this case, unlike, for example, the *Lovell, Kunz,* and *Cantwell* cases, the police have no permit-issuing authority. But the practical consequence is not much different if criminal sanctions are attached to a vague notification requirement. Although there is no explicit delegation to the police of power to determine the requisites of notification, that authority is implicit in the generality of the language and the lack of legislative standards.

So far as the record shows, the Oradell police have promulgated no regulations specifying the content of the notification, and have issued no notification form. The police are left free to decide what will and what will not be treated as satisfactory. There is no way that anyone can certainly determine what will be sufficient.[26]

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[26] In this unsettled condition, simply asking the police gives no real assurance. The vice of the situation is double: a continuing impermissible range of discretion because of the vagueness of the ordinance, and uncertainty concerning the requirements of the particular moment. The New Jersey court has done nothing to clarify the ordinance, other than to "suggest," without definitely ruling, that (App. A5) "resort may be had to the mails."

Even if there are few or even no arrests or prosecutions for violation of the ordinance, its effects may be widely felt in terms of police admonitions, warnings, and instructions to "leave town" because no proper notification is on file. The dangerous breadth of the discretion conferred is patent. What is "identification"? Is it more than name and address?[27] Must the registrant disclose which candidate he is supporting, or what cause he is promoting? "Campaigns" come to an end, but "causes" more often do not; how is it to be determined whether or not the canvasser is now propagating a different "cause," so that a new notification is required? And, if only one notification can be required for each campaign or cause, how can the police get information concerning the time and place of canvassing which extends over weeks, months, or even years?

All this and more is left open. Such a degree of uncertainty is incompatible with First Amendment standards repeatedly articulated by this Court. It is likewise fatal, under the due process clause, to the criminal penalty provisions (imprisonment for up to 90 days and fine up to five hundred dollars) of the ordinance (App. E4). *Lanzetta* v. *New Jersey,* 306 U.S. 451; *United States* v. *Cohen Grocery Co.,* 255 U.S. 81.

[27] Chief Brugnoli's affidavit (App. G4-G5) states that neither photograph nor fingerprints are required, but of course this declaration is not binding for the future on him or his successors. Brugnoli's further statement that the notifier need only "let us know who he is" adds less than nothing by way of clarification.

IV.

The Ordinance Is Invalid on Its Face Under the Privileges and Immunities Clause of the Fourteenth Amendment.

It is, of course, settled that the privileges and immunities clause of the Fourteenth Amendment protects only those rights "which owe their existence to the Federal Government, its National character, its Constitution, or its laws." *Slaughter-House Cases,* 16 Wall. 36, 79. By now those rights may probably be regarded as limited to "interests, growing out of the relationship between the citizen and the national government, created by the Constitution and federal laws." *Colgate* v. *Harvey,* 296 U.S. 404, 444 (Stone, J., dissenting); *Madden* v. *Kentucky,* 309 U.S. 83.

The rights asserted by these appellants are of that description. The ordinance applies to "federal" as well as state and local campaigns and causes. Certainly the right to meet and discuss national candidates and issues stems from the Constitution and laws of the United States, and it may well also be that these rights in state and local contexts are so fundamental to a republican form of government that they should be accorded the same dignity.

Over a century ago this Court specified as among the guaranteed privileges and immunities the right to share in federal offices and participate in administering federal functions. *Slaughter-House Cases, supra* at 79-81, quoting the opinion in *Crandall* v. *Nevada,* 6 Wall. 35, 45 (1868).[28]

[28] It has been said that the right of suffrage is not a federal privilege or immunity. *Minor* v. *Happersett,* 21 Wall. 162, 177;

It is true, of course, that the Oradell ordinance is not an absolute barrier to the exercise of voting and associated rights, but no more was the travel tax outlawed in the *Crandall* case. The scope of the rights to vote and stand for office necessarily comprehends the activities discouraged and the discussions chilled by the ordinance challenged on this appeal.

CONCLUSION

It is respectfully submitted that the judgment of the Supreme Court of New Jersey should be reversed.

Respectfully submitted,

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July 23, 1975

Pope v. *Williams*, 193 U.S. 621, 632-33; *Hall* v. *Beals*, 292 F. Supp. 610, 613 n. 5 (D. Col. 1968). But in *Hague* v. *C.I.O.*, 307 U.S. 496, Chief Justice Hughes and Justices Roberts and Black expressed the view that the guaranteed privileges and immunities included the right to assemble and discuss the National Labor Relations Act. 307 U.S. at 512, 532. The Chief Justice, however, agreed with Justices Stone and Reed that the question had not been properly raised. Justices McReynolds and Butler did not reach the question, and Justices Frankfurter and Douglas took no part in the decision.

ANNEX 1

Annual Rate of Breaking and Entering in Bergen County, N.J. Municipalities with Population Between 8,000 and 10,000*

Municipality	Population in 1970**	Breaking and Entering 1972	Breaking and Entering 1973
Bogota Boro	8960	44	77
Closter Boro	8604	34	46
Cresskill Boro	8298	28	55
East Rutherford Boro	8536	114	91
Emerson Boro	8428	35	41
Leonia Boro	8847	68	110
Little Ferry Boro	9064	148	125
Midland Park Boro	8159	51	64
ORADELL BORO	8903	55***	68
Park Ridge Boro	8709	62	44
River Vale Twsp.	8883	44	49
Wood-Ridge Boro	8311	53	63

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* Source: Uniform Crime Reports State of New Jersey 1973, pp. 102-08.

** 1970 Census, as given in Uniform Crime Reports, *supra* at pp. 10-12. Estimated 1973 population figures are also given there, but 1970 is used because the New Jersey Court (App. A6) cited the 1970 figure for Oradell.

*** The figure in the Brugnoli affidavit (App. G4) is 65.

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IN THE

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OCTOBER TERM, 1974

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Appellants,

v.

THE MAYOR AND COUNCIL OF THE BOROUGH OF ORADELL, *et al.*,

Appellees.

On Appeal from the Supreme Court of New Jersey

BRIEF OF THE APPELLEES

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BRIEF OF THE APPELLEES

We accept the statements contained on pages 1-9 of the appellants' brief and proceed to the merits.

POINT ONE

The challenged ordinance represents a correct balance between the right of the public generally and the rights of the appellants.

In this enlightened age no legislative body enacts a measure which, baldly, interdicts free speech or censors its content. Measures are adopted within the presumed competence of the legislative body. These measures have a sweep distasteful to some. As a result the enactment is judicially challenged. The challenge is buttressed by copious citations sustaining propositions which no one denies. In the interest of saving judicial time and printer's ink, we make the following concessions, freely. We concede the right of Mr. Hynes to seek any office within the gift of the people; his right to say anything he cares to on his candidacy or any other subject; his right to solicit votes in support of his candidacy. We here interpose a caveat. The gist of this controversy is the requirement that Mr. Hynes and his associates identify themselves if they are to canvass from house to house. We know of no agency that can permit the invasion of private property on the theory that the invader has a message to tell to the nation. The householder is the one who will say whom he invites and whom he repels. The challenged ordinance does not require the obtaining of a permit. If it did, the permit would not be a defense in an action of trespass. The municipality could not deprive the householder of his right of privacy. With this reservation, we would concede Mr. Hynes's right to take his message to the people. We say that right was qualified only by the necessity of identification.

With these preliminary observations, we turn to the ordinance in question. The right of free speech is not an

absolute but a working hypothesis. Numerous decisions of this court assert the right of reasonable regulation. *Breard* v. *Alexander,* 341 U. S. 622 (1951); *Martin* v. *City of Struthers,* 319 U. S. 141; *Cantwell* v. *Connecticut,* 310 U. S. 296, 84 L. Ed. 1213, 60 S. Ct. 900 *Konigsberg* v. *State Bar of California,* 366 U. S. 36 (1961). At the state level we refer to *In re Marvin,* 53 N. J. 147 (1969) *cert.* denied 396 U. S. 821, 90 S. Ct. 62, 24 Law Ed. 2d 72 (1969); *Winston* v. *Board of Education of So. Plainfield,* 64 N. J. 582 (1974). In the latter case the State Supreme Court referred to *Pickering* v. *Board of Education,* 391 U. S. 563, 88 S. Ct. 1731, 20 Law Ed. 2d 811. The latter case dealt with the right of the school teacher to express her views. At page 588 the court said:

> "*Pickering* and *Perry* expressly recognize, as do all of the other cited federal decisions, that the teacher's right to speak is not an absolute one but may be limited for the protection of the State's legitimate interests. As the Court put it in *Pickering,* the problem is to arrive at a proper balance between the teacher's interests in speaking freely and the State's interests in promoting the efficiency of its eductional system or other public service."

From abstractions we turn to concrete. The next election in New Jersey is in November. We assume Mr. Hynes to be a candidate for public office, and we assume he wishes to solicit votes in the Borough of Oradell. He may freely do so. The only requirement is that he notify the Police Department, either in writing or orally, what he is about. There is no embarrassing questionnaire to be filled out, no photograph or fingerprints to be submitted and no discretion reposed in any official to grant or withhold permission. If any of the other appellants

desire to obtain signatures on nominating petitions or solicit campaign contributions, they may do so, providing they also notify the Police Department of what they are about.

The question then presented is whether this regulation is a reasonable one. It is hard to see how it could be less onerous without repealing the ordinance altogether. Here too we have an anomaly. This ordinance was enacted by a legislative body, the members of which owe their existence to Mr. Hynes's constituency. Presumably that constituency is satisfied with the ordinance; otherwise, they would have recalled the members of the municipal council. Thus we have Mr. Hynes at war with his own constituency.

This court has placed the public figure in a position different than his fellows. As far as the public figure is concerned state laws regarding defamation are practically non-existent, absent express malice. We refer to *New York Times Co.* v. *Sullivan,* 376 U. S. 254 (1964); *St. Amant* v. *Thompson,* 380 U. S. 727 (1968), *Rosenblatt* v. *Baer,* 383 U. S. 75 (1966); *Monitor Patriot Co.* v. *Roy,* 401 U. S. 265 (1975); *Curtis Publishing Co.* v. *Butts,* 388 U. S. 130 (1967); *Gertz* v. *Robert Welch, Inc.,* 94 S. Ct. 3010. See also 79 *Harvard Law Review,* 112-14 (1965); *Hastings Law Journal,* Volume 26, page 780.

One adversely inclined might say this is a strong indication that the right of free speech supersedes the law of defamation but, if this were so, there would be no need to distinguish between public figures and public events. It would be simply enough to say that the law of defamation is inconsistent with the right of free speech and therefore does not exist. If, in the instant case, Mr. Hynes felt he had been defamed by remarks attributed to political opponents, he could not recover damages the

same as a private citizen. He would have the added burden of showing express malice or inexcuseable recklessness. He also could not recover punitive damages.

We thus have the fact that there is a distinct difference between the public figure and the private citizen, and no one suggests that the distinction is odious.

We think the necessity of identification is placed in stark relief when we consider the alternative. As the ordinance states, Oradell is primarily a residential township composed of one-family homes. With its commuting population, the man of the house is away at his employment during the day. As we understand appellants' argument, any person could be free to go from house to house ringing doorbells and observing the conditions that exist. If the police are alerted to this safari and attempt to question the man, he need not answer other than to say he is a candidate for public office or is soliciting support for such a candidacy. The truth of these assertions cannot be questioned. Indeed, if we understand appellants correctly, the questions could not even be asked. If this be the law, there seems little need for police departments and certainly what we call prime crime prevention would be non-existent. In the initial appearance the appellants cited no statistics and gave no information to question the affidavit of the police chief. Those who seek to commit burglary, rape, robbery and other crimes carry no identification marks. They do not bear the trappings of the criminal; they are attired the same as others. Under the ordinance before this court the police would know who was going from house to house. If those who were going from house to house had not identified themselves, the police would know that and could take appropriate measures.

The life blood of the candidate is publicity. He cannot be elected to office unless people know he is running,

and for what. Based on this necessity we have campaign literature distributed through the mail. We have the candidates making speeches over radio and television and purchasing advertising space in the news media. Mr. Hynes could not have been elected to the Assembly unless people knew he was running, and, for them to know he was running, he would have to identify himself and the office he sought. We do not see, therefore, what the appellants have in mind in saying that there might be some secrecy attached to seeking office or soliciting signatures for nominating petitions or campaign contributions. Surely it is not suggested that the householders answering a knock would be told he was to sign a petition without being told who the petition was for or to advance money for an unkonwn and unnamed candidate or cause. The fact of the matter is when the first householder is solicited either for a vote or for a signature or a contribution, the veil of anonymity is lifted.

For the reasons set forth above, we feel the challenged ordinance is immune from any constitutional infringement, whether under the First or the Fourteenth Amendment and the judgment of the New Jersey Supreme Court should be affirmed.

Respectfully submitted,

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